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In The

Supreme Court of the United States

IOWA CONFERENCE OF THE UNITED METHODIST CHURCH, THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA, JERROLD W. SWINTON, RICK KROMMINGA, KAREN WAHL, KAY J. LAHR and KAREN L. PETERSON,

Petitioners,

v.

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Iowa Supreme Court held that a church, within the context of a church disciplinary action, referring to a member of the church as acting within the "spirit of Satan," forms an actionable defamation claim that does not require judicial abstention under the church autonomy doctrine. Does the First Amendment prohibit a civil court from exercising jurisdiction over a defamation claim against a church by a church member based solely on the church's expression of religious terminology in the context of a church disciplinary action?

PARTIES

The parties to the proceeding below were:

Petitioners: Iowa Conference of the United Methodist Church; United Methodist Church of Shell Rock, Iowa; Jerrold W. Swinton, District Superintendent for the United Methodist Church; Rick Kromminga, Karen Wahl, Kay J. Lahr, and Karen L. Peterson, members of the Staff Parish Committee of the United Methodist Church of Shell Rock. Petitioners were aligned as defendants/appellees below.

Respondents: Jane Kliebenstein and Glen Kliebenstein, former members of the United Methodist Church of Shell Rock. Respondents were aligned as plaintiffs/appellants below.

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PETITION FOR A WRIT OF CERTIORARI

Iowa Conference of the United Methodist Church, United Methodist Church of Shell Rock, Jerrold W. Swinton and members of the Parish Staff Committee of the United Methodist Church of Shell Rock respectfully petition for a writ of certiorari to review the judgment of the Iowa Supreme Court in this case.

OPINIONS BELOW

The opinion of the Iowa Supreme Court is reported at 663 N.W.2d 404. (App. 1). The opinion of the Iowa District Court of Butler County is unpublished. (App. 10).

JURISDICTION

The judgment of the Iowa Supreme Court was entered June 11, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Free Exercise Clause of the First Amendment to the Constitution of the United States provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]."

The Establishment Clause of the First Amendment to the Constitution of the United States provides that

"Congress shall make no law respecting an establishment of religion."

STATEMENT OF THE CASE

This case concerns the application of the church autonomy doctrine in a defamation case. The question is whether the First Amendment prohibits a civil court from exercising jurisdiction over a defamation claim against a church by a church member based solely on the church's expression of religious terminology in the context of a church disciplinary action. May courts subject churches to legal action for their expression of terminology, such as "spirit of Satan," which is clearly not purely secular?

In March 1999, Jane Kliebenstein and her husband, Glen, were members of the United Methodist Church of Shell Rock. (App. 2). Jerrold Swinton, an ordained minister, was the District Superintendent of the United Methodist Church of the district in which the church in Shell Rock sits. (App. 2). There arose some significant internal strife within the church in Shell Rock. Apparently, much of the internal strife within the church centered around Jane Kliebenstein, including her dissatisfaction with Pastor Julie M. Poore-Christensen as the new pastor of the Shell Rock church. Pastor Swinton responded to the reports of this strife by visiting the church in Shell Rock one Sunday morning. (App. 2). While Pastor Swinton was in attendance, Jane Kliebenstein whispered to Pastor Swinton that the Pastor of Shell Rock needed to leave the church. (App. 2, 33).

In response to what Pastor Swinton observed on his visit to Shell Rock, he followed the United Methodist

Church *Book of Discipline*[1] to write a letter, also signed by the members of the Staff Parish Committee, to the congregational mailing list about his concerns for the church in Shell Rock. (App. 33-36). The congregational mailing list included members of the church and others who voluntarily submitted to be on the church mailing list. While it was the intention of Pastor Swinton only to send the letter to official members of the church, the letter was sent to the entire church mailing list, which included one deceased person, spouses of members, and a handful of others on the mailing list who were not official members[2] of the church at that time. (App. 37-41).

The letter was drafted and authorized pursuant to the provisions of the *Book of Discipline*, which provides for the calling by the church of a conference for the purpose of disciplining a church member. In the letter, which is the sole focus of the litigation in this case, addressing "[d]ear Brothers and Sisters in Christ," Pastor Swinton called for a meeting to consider stripping Jane Kliebenstein of her

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[1] The *Book of Discipline* for the United Methodist Church is the official teaching, law, polity and governance of the United Methodist Church.

[2] Whether the letter was only sent to members or to members and non-members of the congregation is irrelevant to the question presented in this case. "The church autonomy doctrine is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy ***freely***." *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 658 (10th Cir. 2002) (emphasis added). Regardless of who received the letter, the issue presented in this case is whether a court may subject a church to legal action for its expression of religious terminology. Moreover, the church autonomy doctrine "focuses on the right of the church to engage freely in ecclesiastical discussions with members and non-members." *Id.* at 658.

"church offices" and to consider asking her to leave the church if her dissension continued. (App. 35).

Within this context of invoking church disciplinary action, Pastor Swinton also addressed what he believed to be the root of the problem at the church in Shell Rock in the same letter. The letter stated:

> When will you stop the blaming, negative and unhappy persons among you from tearing down the spirit of Jesus Christ among you? Jesus faced this same problem and tells the church to take action. Matthew 18:15-17. You know whether a person has the spirit of Jesus or the spirit of Satan by their fruits – see Matthew 7:15-20 . . . When the congregation of Shell Rock is ready to acknowledge they allowed the spirit of Satan to work in their midst, express some contrition and seek help – then help will come which can be followed with healing – 1 John 3:4-10.

(App. 34-35).[3] Pastor Swinton identified an ecclesiastical problem within the church, followed ecclesiastical procedures, spoke through his letter in ecclesiastical terms, and proposed an ecclesiastical solution to the problem as he identified it. Jane Kliebenstein and her husband responded by filing a suit for defamation in the Iowa District Court for Butler County.

The Iowa District Court for Butler County, on motion, granted summary judgment on behalf of Defendants, citing the Establishment Clause of the First Amendment

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[3] For the purpose of summary judgment only, Defendants conceded that the "spirit of Satan" referred to Jane Kliebenstein.

to the Constitution of the United States as controlling this issue. (App. 14). The court held that "[i]n this case, however, the allegedly defamatory statement necessarily requires an examination of religious teachings and doctrinal issues." (App. 24). The district court relied on this Court's analysis of the church autonomy doctrine to support its conclusion. (App. 14-17) (citing *Watson v. Jones*, 80 U.S. 679 (1871); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 447 (1969) ("the logic of this language [referring to Watson] leaves the civil courts *no* role in determining ecclesiastical questions") (emphasis in original); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)).

The Supreme Court of Iowa reversed the district court without dissent. *See Kliebenstein v. Iowa Conference of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003); (App. 1) ("*Kliebenstein*"). Defendants asserted that the Free Exercise Clause and the Establishment Clause prohibit a civil court from exercising jurisdiction to decide a defamation case arising out of the context of church disciplinary action. In such a case, "adjudication of plaintiffs' claims would entangle the court in church doctrine, a matter clearly beyond its jurisdiction." (App. 4). The court noted that defendants raised the objection that "[d]efamation actions are precluded by the First Amendment when an examination of the truth of the allegedly defamatory statements would require an impermissible inquiry into church doctrine and discipline." (App. 6) (citing 50 Am. Jur. 2d *Libel and Slander* § 117, at 420 (1995)). Furthermore, defendants argued that "in order to determine whether the term 'spirit of Satan' is defamatory – or truthful – as applied to Kliebenstein, a factfinder

would necessarily be required to study and interpret church theology and beliefs concerning Satan." (App. 6).

The Iowa Supreme Court stated that "the dispositive question on appeal" is "whether the phrase 'spirit of Satan' has a secular meaning that could be applied in a civil suit for defamation." (App. 6). Defendants offered Dr. Elmer Coyler's affidavit (App. 26-32) to demonstrate that the term "Satan" is a religious term. The court acknowledged that the term "Satan" "has evolved and now impl[ies] a variety of meanings between – and even within – religious denominations." (App. 7).

The Iowa Supreme Court first turned to Webster's New World Dictionary to find a secular definition of the term "Satan." (App. 7). In Webster's, Satan is defined as "the great enemy of man and of goodness; the Devil: usually identified with Lucifer, the chief of the fallen angels." (App. 7). The court, after finding only an ecclesiastical definition of "Satan," sought to define the term "Devil" that appeared in the definition of "Satan." The court cited the definition of "Devil" in American Heritage Dictionary, noting that it has "many dictionary meanings," including an "extremely wicked person: FIEND" and "a person who is energetic, mischievous, daring or clever." (App. 7-8).

The court, without explanation, then went to another dictionary, Webster's Ninth New Collegiate Dictionary, to define the terms "satanic" and "satanism" as "characterized as extreme cruelty or viciousness" and "innate wickedness." (App. 7). The court cited Webster's Ninth New Collegiate Dictionary to define "spirit" as "'an animating or vital principle held to give life to physical organisms' or, more simply, as 'an inclination, impulse, or tendency of a

specified kind: MOOD.'" (App. 8). Using all of these definitions collectively, the court concluded that the phrase "spirit of Satan" has a secular meaning. The court did not undertake an effort to identify exactly what the secular definition of "spirit of Satan" is. The Iowa Supreme Court held that the church autonomy doctrine did not bar jurisdiction and remanded the case for trial.

REASONS FOR GRANTING THE PETITION

This Court has not addressed the church autonomy issue under the First Amendment in over twenty-four years. *See Jones v. Wolf*, 443 U.S. 595 (1979). In this time, a conflict has arisen and there is massive confusion among the states on this core issue of constitutional significance nationwide. The First Amendment currently means something different from state to state across the country. This Court's intervention is necessary and the petition should be granted.

I. THERE IS A DIRECT CONFLICT BETWEEN THE STATES.

The states are in great conflict over the church autonomy doctrine. Some states choose never to exercise jurisdiction over issues that are not purely secular while other states are willing to decide not only ecclesiastical disputes, but also interpret and apply church doctrine and laws in the process. One state will exercise jurisdiction over defamation claims involving ecclesiastical terms while another state will refuse to exercise jurisdiction over defamation claims involving secular terms because such terms still implicate "the conformity of the members of the church to the standards of morals required of them." *See Watson v. Jones*, 80 U.S. 679,

733 (1871). This Court should grant the petition for a writ of certiorari to resolve this conflict so that the First Amendment will not continue to have a different meaning from state to state.

The Iowa Supreme Court's decision in *Kliebenstein* is in direct conflict with the decisions of many other state courts of last resort and lower state courts, including Hawaii, Georgia, Montana, Oklahoma, Massachusetts, Virginia, Maryland, Ohio, Minnesota, and Indiana. *See O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 368 (Haw. 1994); *Rasmussen v. Bennett*, 741 P.2d 755, 758-59 (Mont. 1987) (claims not actionable); *Crosby v. Lee*, 76 S.E.2d 856, 859 (Ga. 1953); *Hadnot v. Shaw*, 826 P.2d 978, 988-89 (Okla. 1992); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 936-38 (Mass. 2002); *Ja-Woo Cha v. Korean Presbyterian Church*, 553 S.E.2d 511, 514-15 (Va. 2001), *cert. denied*, 535 U.S. 1035 (2002); *Downs v. Roman Catholic Archbishop*, 683 A.2d 808, 811-13 (Md. Ct. Spec. App. 1996) (specifically noting the lack of any specific guidance by Supreme Court of the United States regarding the application of the church autonomy doctrine to a defamation claim); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (1st Dist. Hamilton County – Ohio 1997), *dismissed, appeal not allowed*, 688 N.E.2d 1043 (1998); *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. Ct. App. 1993); *Brazauskas v. Fort Wayne-South Bend Diocese, Inc., et al.*, 714 N.E.2d 253 (Ind. Ct. App. 1999). These courts held that they lacked subject matter jurisdiction to adjudicate a defamation claim against the church.

However, a number of states agree with the fundamental decision of *Kliebenstein*, including Alaska, Oregon, California, New York and Pennsylvania. *See McAdoo v.*

Diaz, 884 P.2d 1385, 1391 (Alaska 1994) (First Amendment only gives the church or pastor a conditional privilege to speak); *Marshall v. Munro*, 845 P.2d 424, 428 (Alaska 1993); *Murphy v. Harty*, 393 P.2d 206, 214 (Ore. 1964); *Brewer v. Second Baptist Church*, 197 P.2d 713 (Cal. 1948); *Berger v. Temple Beth-El of Great Neck*, 756 N.Y.S.2d 94 (App. Div. 2d Dep't 2003); *Bear v. Reformed Mennonite Church*, 341 A.2d 105, 107 (Pa. 1975). In two of these states, the courts of last resort decided cases with substantially similar facts as found in *Kliebenstein*, including holding that references to "vile spirit," "one of Satan's choicest tools" and carrying out "satan's plan of division and destruction" were defamatory statements, actionable in a civil court.

A. Cases that agree with the fundamental decision in *Kliebenstein*

Kliebenstein is not an anomaly, but is part of a group of a number of states who agree with its decision that courts may exercise subject matter jurisdiction in spite of the church autonomy doctrine.

A case very similar to *Kliebenstein* is *Brewer*, 197 P.2d 713. In *Brewer*, the California Supreme Court upheld a libel judgment in favor of two plaintiffs who were members of the defendant Second Baptist Church of Los Angeles. The church drew up "charges" against the two plaintiffs including describing one of the plaintiffs as having a "vile spirit," while both plaintiffs were charged with association with another person who was "one of Satan's choicest tools." *Id.* at 716. The "charges" were read to the membership and included in a press release to the local press and

a Baptist newspaper of national circulation. The court affirmed the lower court's judgment against the Church.

Similarly, the Oregon Supreme Court in *Murphy*, 393 P.3d 206, affirmed a defamation claim against a pastor of a church brought by a former pastor. The defendant pastor sent two letters to another pastor concerning the plaintiff pastor's improper conduct as a missionary in Japan. One of the letters referred to the plaintiff pastor as carrying "out satan's plan of division and destruction." *Id.* at 212. The Oregon Supreme Court held that the phrase "carrying out 'satan's plan of division and destruction" was an actionable defamation claim. *Id.* at 214.

The Supreme Court of Pennsylvania in *Bear*, 341 A.2d 105, held that the practice of "shunning" "may be an excessive interference within areas of 'paramount state concern,' i.e., the maintenance of marriage and family relationship, alienation of affection, and the tortious interference with a business relationship, which the courts of this Commonwealth *may* have authority to regulate, even in light of the 'Establishment' and 'Free Exercise' clauses of the First Amendment." *Id.* at 107 (emphasis in original).[4] Thus, the plaintiff's case was not dismissed but rather was remanded so that it could proceed.

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[4] The Supreme Court of Pennsylvania cited *Sherbert v. Verner*, 374 U.S. 398 (1963), to support its holding. If a state thinks it may regulate "shunning" at all under *Sherbert*, then there is no question, in light of the change in religion clause jurisprudence since *Sherbert*, especially in recognition of this Court's decision in *Employment Div. v. Smith*, 494 U.S. 872 (1990), that the state still thinks it may regulate "shunning."

B. Cases that conflict with the fundamental decision in *Kliebenstein*

In conflict, more of the states that have dealt with the issue of whether a church may be brought into court for making theologically motivated statements have held that they are without subject matter jurisdiction to decide the issue, lest they involve themselves in ecclesiastical disputes. The Supreme Court of Hawaii, for example, held that the court is without subject matter jurisdiction to adjudicate a defamation claim brought against the Catholic Church and a bishop. *See O'Connor*, 885 P.2d 361. In *O'Connor*, the plaintiff accused the defendants of defamatory remarks, including accusing the plaintiff of schism, "misrepresenting the Catholic faith," coming "from a neolithic mind frame," being a "fanatic," "duping the faithful," causing "others to suffer the loss of their immortal souls," and stating that the only way to redeem the lost souls was to excommunicate the plaintiff. *Id.* at 367-68. The Supreme Court of Hawaii, citing to *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710-11 (1976), held that the court is barred by the First Amendment from exercising jurisdiction to decide the defamation claim presented by the plaintiff.

In *Rasmussen*, 741 P.2d 755, plaintiffs brought a defamation claim based on statements made before the congregation that the plaintiffs were "disfellowshipped" for "conduct unbecoming Christians" and that "[w]e got the filth cleaned out of the congregation, now we will have God's spirit." *Id.* at 756. The Montana Supreme Court held

that plaintiffs' defamation claim was barred by the Free Exercise Clause of the federal constitution.[5]

In *Schoenhals*, 504 N.W.2d 233, a defamation action brought by church members against the church and the pastor, the court held that "since examination of the truth of Mains' statements would require an impermissible inquiry into Church doctrine and discipline, the district court did not err in concluding that the defamation claim is precluded by the First Amendment." *Id.* at 236. In *Schoenhals*, the pastor read a letter to the entire congregation that formed the basis for the church members' claim of defamation. *Id.* at 235. The letter included accusing the plaintiff-members of "a lack of . . . faithful tithing," "a desire . . . to consistently create division, animosity and strife in fellowship," and "direct fabrication of lies." *Id.* at 234. This letter was written as part of a disciplinary action taken against the plaintiff-members. The court went on to hold that "[w]hile Mains' statement that the Schoenhals had engaged in 'direct fabrication of lies with the intent to hurt the reputation and the establishment' of the Church appears unrelated to church doctrine on its face, the statement nevertheless relates to the Church's reasons and motives for terminating the Schoenhals' membership." *Id.* at 236. Thus, under Minnesota's interpretation of the First Amendment, great importance is placed not only on the words used by the church or pastor but also the

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[5] The court also found it to be irrelevant that the alleged defamatory statements were also communicated to non-members of the congregation. *See Rasmussen*, 741 P.2d at 758 (citing *Redgate v. Roush*, 59 P. 1050 (Kan. 1900)). This issue is also irrelevant to the question presented in this case. *See*, *supra*, footnote 2.

disciplinary context in which those words were used. Even facially secular words may be used in an ecclesiastical context that takes the adjudication of any claim arising out of those words outside of the jurisdiction of the court.

The Georgia Supreme Court, in *Crosby*, 76 S.E.2d 856, held that the court is without jurisdiction under the "United States Constitution" as well as their state constitution to decide whether remarks made in a letter and stated in a sermon are defamatory. The letter, written by the pastor and addressed to "brethren and sisters in the Lord," and confirmed as true orally during a sermon in front of the congregation, alleged that the plaintiff was "bastardly," was an "Edomite," and reference, although figurative as the court pointed out, was made to "the innocent blood he had shed." *Id.* at 858. The court recognized that this letter, especially being written in the course of a disciplinary action, was not cause for the court to interfere with ecclesiastical concerns.

In *Howard*, 705 N.E.2d 385, the plaintiff brought, among other claims, a claim for defamation. The church "disfellowed" plaintiff and statements were made by church officials that plaintiff was a liar, "that he was in league with Satan, that he had been overtaken by a fall, that he was a defiler of the temple and an enemy of the church, and that he was 'sleeping around.'" *Id.* at 388. The Ohio court, in contrast to *Kliebenstein*, held the court was without jurisdiction to adjudicate these defamation claims. In so holding, the Ohio court pointed out that these statements concerned issues of the plaintiff's morality. *See id.* The court further held that a "secular tribunal" is prohibited from exercising jurisdiction over issues concerning "internal church discipline and 'the conformity of the

members of the church to the standards of morals required of them.'" *Id.* (citing *Watson*, 80 U.S. at 733).

These examples of states applying the church autonomy doctrine demonstrate the massive conflict among the states concerning the First Amendment prohibition on civil courts adjudicating ecclesiastical disputes. It is important to resolve this conflict between the states so that the First Amendment can have uniform application for the entire nation instead of taking on a different meaning from state to state.

II. THERE IS CONFUSION AMONG COURTS REGARDING THE APPLICATION OF THE CHURCH AUTONOMY DOCTRINE THAT THIS COURT MAY CLEAR UP WITH THE CASE AT BAR.

By taking this case, the Court will clear up much confusion surrounding the church autonomy doctrine. Whether the church autonomy doctrine is being applied in a defamation case, another tort action or in any other dispute, the two central questions remain the same – when do courts have subject matter jurisdiction and what are the limits when courts do have jurisdiction. Answering these simple questions will add great clarity to the law in all church autonomy cases, not just the case at bar.

The predicate question a court must analyze before adjudicating any dispute, especially one grounded in the ecclesiastical realm, is whether the court has subject matter jurisdiction to resolve the issue. The church autonomy doctrine is a longstanding doctrine that divests civil courts of jurisdiction to hear ecclesiastical disputes. *See Watson*, 80 U.S. 679; *Gonzalez v. Roman Catholic*

Archbishop of Manila, 280 U.S. 1 (1929); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952); *Presbyterian Church*, 393 U.S. 440; *Milivojevich*, 426 U.S. 696.

The last time the Court addressed the church autonomy doctrine was 1979. *See Jones*, 443 U.S. 595. Since that time there have been significant changes and developments in Establishment Clause and Free Exercise Clause jurisprudence. *See, e.g., Employment Div. v. Smith*, 494 U.S. 872 (1990) (change in Free Exercise Clause jurisprudence); *Mitchell v. Helms*, 530 U.S. 793 (2000); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). Moreover, the two leading scholars in church autonomy doctrine, Professor Douglas Laycock and Professor Carl Esbeck, cannot agree on whether the church autonomy doctrine is rooted in the Establishment Clause or the Free Exercise Clause or how the ultimate analysis under the doctrine takes shape. *See* Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373 (1981); Carl H. Esbeck, *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 Iowa L. Rev. 1 (1998). It is thus not surprising that the states need guidance.

Kliebenstein is not an isolated case or merely an aberration. It is an example of a wide divergence of approaches to resolving disputes between churches and church members, especially in the area of defamation. The church autonomy doctrine is unique in that the majority of courts interpreting and applying the religion clauses of the First Amendment are state courts. In this context, without specific guidance from this Court, the First Amendment

can and has taken on a different meaning from state to state as outlined in the previous section.

While most often state courts are left to apply the church autonomy doctrine, the federal circuit courts of appeals have likewise applied the church autonomy doctrine. The Tenth Circuit, in contrast to *Kliebenstein*, held that the threshold question in a defamation case where the church autonomy doctrine is at issue is whether the alleged defamatory statements were "ecclesiastical statements protected by church autonomy or **purely secular** ones." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 657 (10th Cir. 2002) (emphasis added).

It is irrelevant whether the alleged defamatory statements were made to members only or members and non-members. *Id.* at 658. The focus of the analysis is on the characterization and context of the alleged defamatory statements. Unless the court can identify the statements as "purely secular," the court is without jurisdiction to decide the defamation claim. The Iowa Supreme Court in *Kliebenstein*, however, sought to characterize the issue as whether the alleged defamatory statements were "purely ecclesiastical," thus putting the burden on the defendants to prove the purely religious nature of the statements. In that sense, the church autonomy doctrine does not serve to restrain the power of the court.

Some courts, to be sure, may have been confused by this Court's use of the phrase "purely ecclesiastical" in *Gonzalez*, 280 U.S. at 16 (1929). Some courts, for example, hold that courts only lack jurisdiction to decide suits involving **purely ecclesiastical** matters. *See, e.g., First United Church v. Udofia*, 479 S.E.2d 146, 149 (Ga. Ct. App. 1996); *see also* (App. 4). This kind of confusion

regarding the actual standard used to determine whether a court is exercising jurisdiction improperly has led to some courts engaging in bizarre analysis.

An egregious example of a civil court exercising jurisdiction over ecclesiastical matters is found in Alabama. In *Yates v. El Bethel Primitive Baptist Church*, 847 So.2d 331, 334 (Ala. 2002), the Alabama Supreme Court, just last year, held that ecclesiastical decisions, made within the context of a church disciplinary procedure, are subject to civil court review to determine whether the church followed church law. It was the opinion of the Alabama Supreme Court that it is "clear that a Church must be governed by the rules it has chosen to be governed by." *Id.* at 335. Further, "this Court has read these rules from beginning to end . . . [t]hese rules should have been followed to the letter." *Id.* The issue, framed by the court, was "whether the actions by Reverend Yates are contemptuous and whether the election of new Deacons was the result of a valid election. That is, was it held in accordance with the rules the Church has agreed to be bound by?" *Id.* at 334.

Such analysis is contrary to this Court's precedent in *Presbyterian Church*, 393 U.S. at 449 ("The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion – the interpretation of particular church doctrines and the importance of those doctrines to the religion. **Plainly, the First Amendment forbids civil courts from playing such a role.**").

There is no uniform application of the church autonomy doctrine with respect to defamation claims. This is not a surprise since this Court has not touched this issue in over twenty-four years. Across the country, state and federal courts are forced to grapple with an age-old doctrine where some courts may be unsure if it even applies to defamation claims, some courts analyze the applicability of the doctrine under the Establishment Clause, some courts analyze the doctrine under the Free Exercise Clause, some courts use both clauses, and some courts, unfortunately, do not even address the issue. The result has been extremely unique for constitutional law jurisprudence because the meaning of the First Amendment changes as one travels from state to state. Without some guidance from this Court, the diverging paths of applying the First Amendment in this area of the law will continue to widen.

III. THIS CASE IS TIMELY FILED UNDER THE FINAL JUDGMENT RULE.

The final judgment rule ordinarily requires litigation on the merits of the case to reach a final conclusion, leaving the court to decide nothing further and execute the final judgment. *See Cunningham v. Hamilton County*, 527 U.S. 198 (1999); 28 U.S.C. § 1257(a). There is, however, a limited exception to the final judgment rule when a state court finally decides a federal claim or defense, as the Iowa Supreme Court did in this case. *See, e.g., Pennsylvania v. Ritchie*, 480 U.S. 39 (1987).

The Court, in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), identified four categories of cases where the Court has taken jurisdiction without awaiting the

completion of the additional proceedings anticipated in the lower state courts. These categories are: (1) cases where there are further proceedings yet to occur in the state court but a federal issue controls the outcome of the case; (2) cases where the federal issue will survive and require a decision, regardless of the outcome of the anticipated state proceedings; (3) cases where "further proceedings on the merits in the state courts are yet to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case"; and (4) cases where "the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by the Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation . . . [in] the state proceedings still to come." *Id.* at 479-83.

The church autonomy doctrine, grounded in the religion clauses of the First Amendment, which divests a civil court of subject matter jurisdiction over a case, is a federal issue. *See Millivojevich*, 426 U.S. at 710; *Presbyterian Church*, 393 U.S. 440; *Watson*, 80 U.S. at 733. Indeed, the First Amendment issue in *Kliebenstein* is dispositive of the entire case. *Kliebenstein* falls within two (1 and 4) of the categorical exceptions to the final judgment rule outlined in *Cox*.

First, while there are further proceedings yet to occur in the state court (the undaunting task of proving the falsity or truth that Jane Kliebenstein is the "spirit of Satan"), the church autonomy doctrine controls the outcome of the case by divesting the court of jurisdiction even to consider the issue. Second, it may be the case that defendants, the party seeking review of the federal issue by this Court, might prevail on the merits by plaintiffs

being unable to prove the falsity of the characterization of Jane Kliebenstein as the "spirit of Satan" or defendants proving the truth of that assertion. If such events come to pass, it would be unnecessary for this Court to review the federal issue involved in this case. However, if this Court reverses the Iowa Supreme Court's decision and finds that the court is without subject matter jurisdiction to adjudicate Plaintiff's claims, then that decision would be preclusive of any further litigation in the state proceedings still to come.

In addition to meeting two of the four exceptions outlined in *Cox*, the assertion of the defense of church autonomy by a church "is similar to a government official's defense of qualified immunity." *Bryce*, 289 F.3d at 654. This is so because the church autonomy doctrine exists to shield certain defendants from even being brought into the courthouse in the first place, a similar purpose as qualified immunity. A court's "denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). Thus, there is no doubt that the decision in *Kliebenstein* is a final judgment reviewable by this Court at this time.

CONCLUSION

Without specific guidance on this issue from the Court, cases such as *Kliebenstein* will continue to have a chilling effect on church speech and free exercise. Churches, especially those of large denominations with mandated or entrenched customary practices developed

over centuries, will be pressured to break away from church doctrine to avoid litigation or comply with the suggestions of their insurers. The First Amendment should not mean something different from state to state across the country, especially in such a crucial area of religious liberty.

For the foregoing reasons, Petitioners ask this Court to grant their petition for a writ of certiorari.

Respectfully submitted,

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IN THE SUPREME COURT OF IOWA

No. 10/02-0011
Filed June 11, 2003

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN,

Appellants,

vs.

IOWA CONFERENCE OF THE UNITED METHODIST CHURCH, THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA, JERROLD W. SWINTON, RICK KROMMINGA, KAREN WAHL, KAY J. LAHR and KAREN L. PETERSON,

Appellees.

Appeal from the Iowa District Court for Butler County, Jon Stuart Scoles, Judge.

Plaintiffs challenge summary dismissal of claims for defamation. **REVERSED AND REMANDED.**

Thomas C. Verhulst of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellants.

L. R. Voigts and Jodi L. Ahlman of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellees.

NEUMAN, Justice.

This appeal involves a church-related controversy, an area of discord traditionally considered "off limits" for civil courts. Plaintiff, Jane Kliebenstein, claims she can overcome that jurisdictional hurdle here because church

officials' allegedly defamatory statements about her carried secular overtones and were published to non-members of the church. We agree that she has an actionable, albeit limited, claim that cannot be resolved by way of summary judgment. We therefore reverse the district court's dismissal and remand for further proceedings.

I. Background Facts and Proceedings.

The controlling facts are not disputed. In March 1999, Jane Kliebenstein and her husband, Glen, were members of Shell Rock United Methodist Church (UMC). Defendant Jerrold Swinton was the UMC district superintendent. Prompted by reports of strife within the congregation, Swinton (who is an ordained minister) visited the Shell Rock church one Sunday morning. He then wrote the letter that is at the heart of this controversy.

Swinton's letter, which was also signed by the members of the Staff Parish Committee, was mailed not only to members of the congregation but also to other persons living in the Shell Rock community. Portions of the letter pertinent to these proceedings are quoted below:

> A few months ago I attended worship in Shell Rock and I rejoiced to see so many young families in church. I was in despair when Jane Kliebenstein made an effort to whisper scornfully to me that this pastor must leave Shell Rock. . . .
>
> . . . .
>
> Folks, when is enough, enough? When will you stop the blaming, negative and unhappy persons among you from tearing down the spirit of Jesus Christ among you? . . . You know whether a person has the spirit of Jesus or Satan by their

> fruits. . . . I am distressed and perplexed why people have tolerance and compassion for anyone who habitually tears down the Body of Christ by habitually sowing discord and pain.
>
> . . . .
>
> When the congregation of Shell Rock is ready to acknowledge they allowed the spirit of Satan to work in their midst, express some contrition and seek help – then help will come. . . .

Swinton's letter went on to advise that he and the Staff Parish Committee would call a "Church Conference" in accordance with established disciplinary procedures to "propose that Jane Kliebenstein be stripped of church offices. It is understood that if she continues to cause dissension, she will next be asked to leave the Shell Rock UMC."

The Kliebensteins responded with this suit for defamation. Their petition claimed the letter falsely attacked Jane's "integrity and moral character," causing damage to her reputation in the community. Glen sought damages for loss of consortium.

Following discovery, defendants moved for summary judgment. They conceded for purposes of the motion that Swinton's statement about the "spirit of Satan" referred to Jane Kliebenstein. They argued, however, that the phrase is a "purely ecclesiastical term, deriving its meaning from religious dogma" thereby preventing the court from adjudicating its impact in the context of a civil suit for defamation. The district court agreed, finding it was constitutionally without jurisdiction to entertain the controversy. This appeal by the Kliebensteins followed.

II. Issue on Appeal/Scope of Review.

Plaintiffs concede that the Free Exercise and Establishment Clauses of our federal and state constitutions preclude civil court interference in the disciplinary and governance matters of a religious entity. They urge this court to find, however, that the defendants "exceeded the protective confines of these clauses when they published their humiliating and disparaging remarks to individuals in the local community who were not members of the church nor allowed to participate in the disciplinary proceedings" brought against Jane. Defendants counter that adjudication of plaintiffs' claims would necessarily entangle the court in church doctrine, a matter clearly beyond its jurisdiction.

As this case reaches us on appeal from summary judgment proceedings, we are obliged to view the facts in the light most favorable to the parties resisting the motion, the plaintiffs. *Marks v. Estate of Hartgerink*, 528 N.W.2d 539, 544 (Iowa 1995). Summary judgment is appropriately granted only where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987).

III. Analysis.

By its very nature, the controversy before us implicates the Establishment Clauses of the federal and Iowa constitutions. Iowa, like virtually every other jurisdiction, avoids "interfering in *purely* ecclesiastical matters." *Marks*, 528 N.W.2d at 544 (emphasis added).

> It is a general rule recognized here and in foreign jurisdictions, that ordinarily the courts have no

> jurisdiction over, and no concern with, purely ecclesiastical questions and controversies, including membership in a church organization, but they do have jurisdiction as to civil, contract, and property rights which are involved in or arise from a church controversy.

Brown v. Mt. Olive Baptist Church, 255 Iowa 857, 859, 124 N.W.2d 445, 446 (1963).

Plainly Iowa's courts could not entertain this case if it involved solely the discipline or excommunication of Jane Kliebenstein. *Marks,* 528 N.W.2d at 545. "[C]ivil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713, 96 S. Ct. 2372, 2382, 49 L. Ed. 2d 151, 165 (1976); *accord Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468, 471 (8th Cir. 1993). Nor would her claim enjoy viability had the matter been divulged solely to the members of Shell Rock UMC. It is the general rule that

> the common interest of members of religious associations is such as to afford the protection of qualified privilege to communications between them in furtherance of their common purpose or interest. Thus, communications between members of a religious organization concerning the conduct of other members or officers in their capacity as such are qualifiedly privileged.

50 Am. Jur. 2d *Libel and Slander* § 340, at 663 (1995); *see Marks,* 528 N.W.2d at 546 (applying qualified privilege to statements made in context of church disciplinary proceedings).

The fact that Swinton's communication about Jane was published outside the congregation weakens this ecclesiastical shield. First, otherwise privileged communications may be lost upon proof of excess publication or publication "beyond the group interest." *Brewer v. Second Baptist Church of Los Angeles,* 197 P.2d 713, 717 (Cal. 1948) (citation omitted); *accord Marks,* 528 N.W.2d at 546. Second, if publication solely to church members justifies ecclesiastical status for otherwise defamatory communications, proof of publication to *non*-church members arguably supports the opposite conclusion. *See Schoenhals v. Mains,* 504 N.W.2d 233, 236 (Minn. Ct. App. 1993) (proof that alleged defamatory letter sent only to church members strengthened First Amendment claim precluding adjudication of "internal conflict within the Church").

Defendants counter that publication to *non*-church members is irrelevant here. Their defense rests on the general rule that "[d]efamation actions are precluded by the First Amendment when an examination of the truth of the allegedly defamatory statements would require an impermissible inquiry into church doctrine and discipline." 50 Am. Jur. 2d *Libel and Slander* § 117, at 420 (1995). Defendants contend that in order to determine whether the term "spirit of Satan" is defamatory – or truthful – as applied to Kliebenstein, a factfinder would necessarily be required to study and interpret church theology and beliefs concerning Satan. The contention brings us to the dispositive question on appeal: whether the phrase "spirit of Satan" has a secular meaning that could be applied in a civil suit for defamation without treading on – or wading into – religious doctrine.

Defendants rely heavily on an affidavit prepared by Rev. Dr. Elmer Colyer, professor of historical theology and

Wesley studies at the University of Dubuque Theological Seminary. Professor Colyer asserts that terms such as "Satan" and "devil" have their roots in religious doctrine. His affidavit also reveals that these terms have evolved and now imply a variety of meanings between – and even within – religious denominations. Thus, in his words, "to determine *within any specific ecclesiastical context* whether the use of the term, 'spirit of Satan,' is defamatory . . . it is necessary to determine the meaning of the term for the religious community or body." (Emphasis added.)

The weakness in defendants' reliance on this expert opinion is that publication of the letter was not limited to a "religious community or body." Given the nature of plaintiffs' claims, the proper focus of our inquiry is not on the meaning of "spirit of Satan" within an ecclesiastical context but to determine whether the phrase has a secular meaning. In other words, could a fact finder determine whether Kliebenstein was defamed without resort to theological reflection?

Perusing a standard dictionary convinces us that the term used by church officials to describe Jane Kliebenstein may have religious roots but also carries a common, and largely unflattering, secular meaning. "Satan" is defined as "the great enemy of man and of goodness; the Devil: usually identified with Lucifer, the chief of the fallen angels." Webster's New World Dictionary 1192 (3d ed. 1994). Definitions of "satanic" and "satanism" include "characterized by extreme cruelty or viciousness" and "innate wickedness." Webster's Ninth New Collegiate Dictionary 1044 (1986). "Devil" has many dictionary meanings, including "an extremely wicked person: FIEND," *id.* at 347, and "a person who is energetic,

mischievous, daring, or clever," American Heritage Dictionary 389 (2d ed. 1985). The word "spirit" is defined as "an animating or vital principle held to give life to physical organisms" or, more simply, as "an inclination, impulse, or tendency of a specified kind: MOOD." Webster's Ninth New Collegiate Dictionary 1137 (1986).

We conclude from these definitions that the phrase "spirit of Satan" has meaning in a secular, as well as sectarian, context. Our conclusion is fortified by considering other cases in which associating a party with Satan has become an issue. In *State v. Tate,* 341 N.W.2d 63, 64-65 (Iowa Ct. App. 1983), our court of appeals held a defendant charged with third-degree theft was denied a fair trial when the court refused his request to explain the contents of a book found in his possession upon his arrest, *Satan is Alive and Well on Planet Earth.* Based on the book's title and testimony by a police officer, the court concluded a jury could have believed the defendant was a "Satan worshipper," a fact "highly prejudicial to his case." *Id.* at 65. No sectarian discussion of religious dogma was needed for the court to determine that "[t]he prejudice to the defendant should have been obvious to the prosecutor." *Id.; see also Johnston v. Luebbers,* 288 F.3d 1048, 1061 (8th Cir. 2002) (describing prosecutor's description of defendant as Satan "improper" and "inflammatory").

When similar accusations of being "in league with Satan" are made in the context of a church meeting called to determine whether a member should be "disfellowed," a court of appeals has affirmed the dismissal of a defamation claim against the church. *Howard v. Covenant Apostolic Church, Inc.,* 705 N.E.2d 385, 388-89 (Ohio Ct. App. 1997). But where accusations of associating with "one of Satan's choicest tools" were lodged against a church

member in a national newspaper covering the affairs of the church, the California Supreme Court held the statements were actionable where exaggerated and, therefore, unprivileged. *Brewer,* 197 P.2d at 716-17.

Because we are convinced that the phrase "spirit of Satan" has a secular, as well as sectarian, meaning, and because the accusatory phrase was used by defendants to describe Jane Kliebenstein in a communication published to more than just church members, we hold plaintiffs' claim of defamation should not have been summarily dismissed by the district court on constitutional grounds. We therefore reverse and remand for further proceedings.

REVERSED AND REMANDED.

IOWA DISTRICT COURT FOR BUTLER COUNTY

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN, Plaintiff, vs. IOWA CONFERENCE OF THE UNITED METHODIST CHURCH; THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA; JERROLD W. SWINTON; RICK KROMMINGA; KAREN WAHL; KAY J. LAHR and KAREN L. PETERSON, Defendants.	No. LACV018800 ORDER FOR DISMISSAL (Filed Dec. 11, 2001)

BE IT REMEMBERED that on the 15th day of October, 2001, the above-entitled matter came on for hearing on the **MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** filed by the defendants on September 10, 2001. The plaintiffs were represented by their attorney, Thomas C. Verhulst. The defendants were represented by their attorneys, L. R. Voigts and Jodi L. Ahlman.

In their alternative motion, the defendants request that the plaintiffs' petition be dismissed, or in the alternative that the defendants be granted summary judgment, for the reason that the court lacks subject matter jurisdiction. At the time of hearing, counsel for the plaintiffs indicated that he did not object to the procedural device of filing the motions in the alternative.

Assuming the truth of the allegations set forth in the petition, and viewing the evidence in the light most favorable to the plaintiffs, the facts underlying this controversy may be briefly stated as follows:

FINDINGS OF FACT

Plaintiff Jane Kliebenstein and her husband, plaintiff Glen Kliebenstein, were at all material times members of the United Methodist Church of Shell Rock, Iowa. Defendants Rick Kromminga, Karen Wahl, Kay J. Lahr, and Karen L. Peterson were at all material times members of the staff parish committee of defendant United Methodist Church of Shell Rock, Iowa. Defendant Jerrold W. Swinton was at all material times the district superintendent of the Waterloo district of the Iowa Conference of the United Methodist Church, which included the United Methodist Church of Shell Rock, Iowa.

On March 19, 2001, the plaintiffs filed the instant action in four counts: Count I is brought by Jane Kliebenstein and requests compensatory damages for allegedly defamatory statements published by the defendants. In Count II, Jane Kliebenstein alleges that the statements were made with malice, thereby entitling her to recover punitive damages. In Count III, Jane Kliebenstein claims that publication of the defamatory statements constituted intentional infliction of emotional distress, thereby entitling her to recover compensatory and punitive damages. Count IV is a claim by Glen Kliebenstein to recover for loss of spousal consortium.

All four counts arise following statements made in a letter dated March 22, 1999. The letter was authored by Swinton and signed by him and the four members of the

Shell Rock staff parish committee. The letter, which is addressed to "Dear Brothers and Sisters in Christ," begins as follows:

> "A few months ago I attended worship in Shell Rock and I, rejoiced to see so many young families in church. I was in despair when Jane Kliebenstein made an effort to whisper scornfully to me that this pastor must leave Shell Rock."

The letter asserts that Pastor Julie "has been under attack and undermined from the moment she set foot in Shell Rock." According to the letter, the Shell Rock church "is already known as a 'clergy graveyard.'" The letter continues:

> "Folks, when is enough, enough? When will you stop the blaming, negative and unhappy persons among you from tearing down the spirit of Jesus Christ among you? Jesus faced this problem and tells the church to take action. Matthew 18:15-17. You know whether a person has the spirit of Jesus or Satan by their fruits – see Matthew 7:15-20, I am distressed and perplexed why people have tolerance and compassion for anyone who habitually tears down the Body of Christ by habitually sowing discord and pain."

The letter then suggests that the "fault" in the church is "not your pastors, it is not your district superintendent, it is not the Conference." The letter continues:

> "When the congregation of Shell Rock is ready to acknowledge they allowed the spirit of Satan to work in their midst, express some contrition and seek help – then help will come which can be followed with healing – see 1 John 3:4-10."

The letter then indicates that a church conference had been scheduled. Among other things, "[t]he Shell Rock Staff Parish Committee will then propose that Jane Kliebenstein be stripped of church offices. It is understood that if she continues to cause dissension, she will next be asked to leave the Shell Rock UMC." The letter concludes:

> "Hopefully, the many loving members of this congregation, will step forward to restore a loving spirit of Jesus to this Body of Christ."

The letter was apparently mailed out by the Shell Rock church. Copies were sent to members and other persons in the Shell Rock Community who were not members of the church.

On April 12, 1999, a letter signed by Swinton and Kromminga was sent to church members, reminding them of the meeting on April 22, 1999. Apparently, the second letter was only sent to members of the church and indicated that only church members would be permitted to attend the meeting. In addition, the letter stated:

> "The reference to the spirit of Satan in the April 22 (sic) letter was not intended for one person, but for all of us who too often forget that we need to be about the business of our Lord. When Peter had his own agenda Jesus accused him on separate occasions of having the spirit of Satan. (Mark 8:33, Luke 22:31) We apologize to one and all if our prior letter was misread in regard to our Satan reference."

Additional facts as they pertain to the Conclusions of Law will be set forth below.

CONCLUSIONS OF LAW

The plaintiffs claim that Jane Kliebenstein was defamed by the reference to the "spirit of Satan" and, therefore, they are entitled to damages. While the second letter denies that the reference was "intended for one person," when viewing the evidence in the light most favorable to the plaintiffs, the court concludes that a jury could find that the reference was to Jane Kliebenstein. The defendants assert that subject matter jurisdiction is lacking due to the application of the Establishment Clause found in the First Amendment to the United States Constitution and Article I Section 3 of the Constitution of the State of Iowa. Accordingly, the defendants request that the petition be dismissed.[1]

The First Amendment to the United States Constitution, which is applicable to the states through the Fourteenth Amendment, provides, in pertinent part, as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . . " Article 1, Section 3 of the Iowa Constitution imposes an identical restriction on the Iowa General Assembly.

The United States Supreme Court has repeatedly held that the civil courts may not adjudicate disputes which require an ecclesiastical or doctrinal determination. This view was stated by the court in the often-cited case of *Watson v. Jones*, 80 U.S. 679 (1871), as follows:

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[1] In *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 812 (Iowa 1983), Justice McCormick noted that "[i]t is a paradox that disputes among church members, like disputes in families, can become emotional and bitter despite the high motives and essential decency of the people involved."

> "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

In *Presbyterian Church v. Hull*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), a case cited in the plaintiffs' brief, a church property dispute arose when two local churches withdrew from a hierarchical general church organization. The case was submitted to a jury, which was instructed to determine whether the actions of the general church amounted to a fundamental or substantial abandonment of the original tenets and doctrines of the church. In reversing the Georgia Supreme Court, the United States Supreme Court cited the language from *Watson* set forth above and indicated that "[t]he logic of this language leaves the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes."

393 U.S. at 447, 89 S.Ct. at 605, 21 L.Ed.2d at 664. (Emphasis in original.)

In addition, however, the court recognized that "there might be some circumstances in which marginal civil court review of ecclesiastical determinations would be appropriate." *Id.*

> "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." 393 U.S. at 449, 89 S.Ct. at 606, 21 L.Ed.2d at 665.

Similarly, in *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), the United States Supreme Court concluded that the Illinois Supreme Court improperly interfered with ecclesiastical determinations. Where resolution of a dispute cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the church. 426 U.S. at 709, 49 L.Ed.2d at 162.

> "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these

> matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." 426 U.S. at 724, 49 L.Ed.2d at 171.

The plaintiffs argue, however, that this is not a property dispute, but rather is a tort claim based on civil common law. The ecclesiastical abstention rule has been applied, however, in tort cases as well as in property disputes. *O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 365 (Haw. 1994). A number of courts have considered the rule in the context of a defamation case.

In *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F.Supp.2d 732 (N.J. 1999), the plaintiffs sued the governing body of a synagogue, alleging that they were defamed by a notice sent to various members. The court noted that "secular courts may decide civil disputes between a religious body and its members or its clergy if those disputes involve purely secular issues and can be resolved without entanglement with matters of faith, discipline, or doctrine." *Id.* at 738. In dismissing the action for lack of subject matter jurisdiction, however, the court concluded that "the plaintiffs' defamation claims would necessarily implicate ecclesiastical questions concerning the faith, discipline, rule, custom, or law of their religion." *Id.* at 739.

In *O'Connor v. Diocese of Honolulu*, supra, a parishioner who was excommunicated after he criticized the bishop, brought an action alleging defamation, among other things. The Hawaii Supreme Court identified the issue as "whether a state court can decide O'Connor's claims without resolving underlying controversies over

religious doctrine, church law, or church governments." 885 P.2d at 363. The court concluded that "[i]t is apparent that, to determine the truth or falsity of the statements, a state court would have to inquire into church teachings and doctrine." *Id.* at 368. Accordingly, the court applied the ecclesiastical abstention rule and dismissed the action for lack of subject matter jurisdiction.

In *Farley v. Wisconsin Evangelical Lutheran Synod*, 821 F.Supp. 1286 (Minn. 1993), a former pastor brought an action against the church for defamation. The court noted that "the court lacks jurisdiction over an action if the inquiry it would have to undertake to resolve the issues before it requires analysis of the religious organization's decision making process or excessive entanglement in the organization's religious affairs." *Id.* at 1289. The plaintiff argued, however, that a resolution of his defamation claim would not implicate the First Amendment because the dispute did not require an examination of church procedures or ecclesiastical decisions. In rejecting the plaintiff's argument, the court stated:

> "Although factual scenarios might exist where resolution of a defamation action against a religious organization would not require the court to undertake an inquiry in violation of the First Amendment, this case does not present such a situation." *Id.* at 1290.

In *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. App. 1993), the court noted that the First Amendment precludes "excessive entanglement" by the court in religious matters. *Id.* at 235. The plaintiffs sued the pastor of their church for defamation following the publication of a letter listing reasons why the plaintiffs had been terminated from membership in the church. The district court granted

summary judgment to the church and dismissed the plaintiffs' claim. The Minnesota Court of Appeals affirmed, finding that an examination of the substance of the letter would require "an impermissible inquiry into Church disciplinary matters." *Id.* at 236. *See also, Black v. Snyder*, 471 N.W.2d 715, 720 (Minn. App. 1991) (a review of the plaintiffs' defamation claim would require a review of the church's reasons for discharging the plaintiff, "an essentially ecclesiastical concern.")

In *McManus v. Taylor*, 521 So.2d 449 (La. App. 1988), a former minister brought an action against the church alleging defamation. The trial court overruled the defendant's claim that the court lacked subject matter jurisdiction on the issue. The Louisiana Court of Appeals reversed, finding that the plaintiff's defamation claim "would subject his church authorities to a defamation case based upon the performance of their duties in the administration of their church." *Id.* at 451.

In *Williams v. Gleason*, 26 S.W.3d 54 (Tex. App. 2000), church members who were disciplined by the church elders brought an action for libel, slander, and intentional infliction of emotional distress. Among other things, the elders had sent a letter to the plaintiffs alleging that "you have sinned by sowing seeds of discord among the brethren." *Id.* at 57, fn. 4. The court concluded that the First Amendment prohibited civil courts from intruding into ecclesiastical matters. The court found that "each claim implicates an ecclesiastical matter, namely [the plaintiff's] subjection to the church's discipline." *Id.* at 59.

> "Although wrongs may exist in the ecclesiastical setting, and although the administration of the church may be inadequate to provide a remedy, the preservation of the free exercise of religion is

> deemed so important a principle it overshadows the inequities that may result from its liberal application." *Id.*

In support of their position, the plaintiffs cite *Murphy v. Harty*, 393 P.2d 206 (Ore. 1964) and *Brewer v. Second Baptist Church of Los Angeles*, 197 P.2d 713 (Cal. 1948). In both cases, the courts discuss the doctrine of privilege as it applies to allegedly defamatory communications in a religious context. Neither case discusses the constitutional issue raised by the defendants in the instant action. That is, the cases do not address the issue of whether the establishment clause of the federal and state Constitutions prohibits the court from assuming subject matter jurisdiction.

Plaintiffs also cite *McAdoo v. Diaz*, 884 P.2d 1385 (Alas. 1994). There, a parishioner was dismissed from several of her volunteer positions after she reported to the state that the church's plans for an altar without a handrail constituted elder abuse or neglect under state law. The plaintiff sued, alleging that the church's actions violated the "whistleblower" protection of the elder neglect reporting statute and that the pastor had defamed her in a dismissal letter. *Id.* at 1386. Most of the court's opinion was addressed to the whistleblower provisions of Alaska's elder abuse law. In concluding that the plaintiff's defamation claim was not barred by the state or federal constitutions, the court noted that "a cause of action against a minister could proceed only if the elements of the claim did not require the court to evaluate the qualifications of the minister or interpret church dogma." *Id.* at 1390. The court concluded that the plaintiff's claim "does not touch the merits of any core religious questions." *Id.*

The Iowa courts have also recognized the general rule that the courts have no jurisdiction over ecclesiastical issues.

> "It is a general rule recognized here and in foreign jurisdictions, that ordinarily the courts have no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies, including membership in a church organization, but they do have jurisdiction as to civil, contract, and property rights which are involved in or arise from a church controversy." *Brown v. Mt. Olive Baptist Church*, 124 N.W.2d 445, 446 (Iowa 1963).

See also, Pierce v. Conference of Seventh-Day Adventists, 534 N.W.2d 425, 427 (Iowa 1995) ("The First and Fourteenth Amendments to the United States Constitution prohibit courts from interfering with ecclesiastical decision making.")

Apparently, the only case in Iowa involving a claim of defamation under similar circumstances is *Marks v. Estate of Hartgerink*, 528 N.W.2d 539 (Iowa 1995). In that case, Marks was suspended from membership in his church and was later excommunicated by the church's governing body. Marks then sued the pastor and several elders in the church, claiming defamation and intentional infliction of emotional distress. The trial court granted the defendant's motion for summary judgment and the Iowa Supreme Court affirmed.

The court cited with approval the "general rule" identified in *Brown* and set forth above. The court concluded that it would "not interfere" with the church's action in excommunicating the plaintiff.

> "Trinity's decision to excommunicate Marks was purely ecclesiastical in nature, and therefore we will not interfere with the action. Interfering with the decision would contravene both our history of leaving such matters to ecclesiastical officials and the First and Fourteenth Amendments of the United States Constitution." *Id.* at 545.

The court does not directly address the issue of whether the general rule of noninterference applied to Marks' defamation claim. The court discusses the issues associated with defamation claims, including publication, truth or falsity, sufficiency of the evidence, and qualified privilege. The court states that "[w]e believe it is appropriate to apply a qualified privilege to statements made in the context of a church disciplinary proceeding." *Id.* at 546. The court then concluded, as a matter of law, that no actual malice existed, the statements were qualifiedly privileged, and the defendants were entitled to summary judgment. *Id.*

Turning to the facts in the instant action, the plaintiffs' claim is based on a statement made in a letter sent to members of the Shell Rock church and others in the community, charging that "they allowed the spirit of Satan to work in their midst." The court believes a jury could conclude that the letter equates plaintiff Jane Kliebenstein with "the spirit of Satan." The plaintiffs argue that their defamation claim can be resolved without a doctrinal examination of the precise meaning of the phrase, because under *any* definition, it is defamatory. The defendants argue, on the other hand, that submission of this case would necessarily plunge the jury into ecclesiastical or doctrinal waters.

In support of their motion for summary judgment, the defendants submit an affidavit of Marvin D. Arnpriester, who served as District Superintendent of the Waterloo district of the Iowa Annual Conference of the United Methodist Church from 1989 to 1995. According to the affidavit, no other church in the district (which was composed of approximately 70 churches) had as much internal strife as the church at Shell Rock. In his affidavit, Arnpriester opines that "it was obvious to me that the principal person involved in the internal conflict was Jane Kliebenstein."

The responsibilities of the staff parish relations committee are set forth in section 262.2 of the Book of Discipline of the United Methodist Church, a copy of which was attached to the affidavit of defendant Richard Kromminga. The duties of the committee include conferring and counseling with the pastor and staff "concerning conditions within the congregation as they affect relations between the pastor or staff and the people . . . " See, section 262.2(f)(1). The letter of March 22 was sent in conjunction with disciplinary action proposed against Jane Kliebenstein by the staff parish relations committee.

In support of their motions, the defendants also submit the affidavit of Rev. Dr. Elmer M. Colyer, a professor of historical theology at the University of Dubuque Theological Seminary in Dubuque, Iowa. In his affidavit, Colyer states that the phrase "spirit of Satan" and similar references "are not secular terms, but are words that find their genesis and meaning in religious communities and their traditions." According to Colyer, the term "Satan" does not have a fixed definition, but takes on various meanings and usage in various religious traditions. Colyer writes that the United Methodist Church does not have

"an official doctrinal statement" on the subject of Satan, and that various United Methodist theologians "hold extremely diverse views on the subject."

As noted by the court in *Farley*, 821 F.Supp. at 1290, there may be factual scenarios where a defamation action can be sustained against a religious organization. In their brief, the defendants seem to concede that if the plaintiff were defamed with a secular term, such as "thief," "liar," "homosexual," or the like, then the ecclesiastical abstention rule would not be invoked. In this case, however, the allegedly defamatory statement necessarily requires an examination of religious teachings and doctrinal issues. The First and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 of the Iowa Constitution prohibit such intrusion by the secular courts. Accordingly, the court finds that the motions should be granted.

ORDER

IT IS THEREFORE ORDERED as follows:

1. The motion to dismiss or, in the alternative, motion for summary judgment filed by the defendants on September 10, 2001, is hereby **GRANTED** and **SUSTAINED**.

2. The petition at law filed on March 19, 2001, is hereby **DISMISSED**.

3. The court costs in this action shall be assessed against the plaintiffs, as determined by the Clerk of Court in the amount of $ 105.00.

Dated this 10th day of December, 2001.

/s/ Jon Stuart Scoles
Jon Stuart Scoles
Judge of the Second Judicial
District of Iowa

Clerk to provide copies
to counsel of record.

IOWA DISTRICT COURT FOR BUTLER COUNTY

AFFIDAVIT OF
REV. DR. ELMER M. COLYER

I am presently Professor of Historical Theology and Stanley Professor of Wesley Studies at the University of Dubuque Theological Seminary in Dubuque, Iowa. I received a Bachelor of Science degree in 1981 at the University of Wisconsin in Platteville, a Master of Divinity degree in 1985 at the University of Dubuque Theological Seminary, and a Ph.D. at Boston College with emphasis in Theology and Historical Theology & Church History. In addition to my various teaching responsibilities, I have also served as a pastor in several United Methodist churches. I am an ordained elder in the United Methodist Church.

The phrase "spirit of Satan" and other references such as "devil," "fallen angel," "Serpent," "demon," "demon-possessed," etc. are not secular terms, but are words that find their genesis and meaning in religious communities and their traditions. The idea of a power or force of evil/dysfunction is present in many religions, including Judaism and Christianity.

The Old and New Testaments of the Christian Bible, the final authority for faith and practice of most Christian denominations/churches, contain many references (several hundred) to Satan, the devil, demon, etc. Some of the most important include: Gen. 3:1-19; Lev. 17:7; Deut. 32:17; I Chron. 21:1; Job 1:6-12, 2:1-7; Psalms 106:37, 109:6; Isa. 27:1; Zech. 3:2; Matt. 4:24, 8:16, 8:31-33, 9:32-34, 11:18, 12:24-28, 16:23, 17:18; Mark 1:32, 4:15, 5:12-18, 6:13, 7:26-30, 9:38, 16:9, 16:17; Luke 4:33-35, 7:33, 8:2-38, 9:42, 10:18, 11:14;-20, 13:32, 22:3; John 7:20, 8:49, 10:20-21;

Acts 10:38, 13:10; 19:13; Rom. 8:38, 16:20; 1 Cor. 5:5, 10:20-21; 2 Cor. 11:3, 11:14, 12:7; Eph. 4:27, 6:11; 1 Thess. 2:18, 2 Thess. 2:9; 1 Tim 1:20, 3:6-7; 4:1; 2 Tim. 2:26; Heb. 2:14; James 2:19; 1 Peter 5:8; 1 John 3:8-10; Jude 9; Rev. 9:20, 12:9, 16:14, 18:2, 20:2, 20:7. Even from this brief sampling of significant biblical tests, it is clear that this terminology (devil, Satan, demon, etc.) is found throughout the Bible and in nearly every chapter of the Gospels.

In Acts 13:10, Paul, the Apostle, tells Elymas, "You are a child of the devil . . . " In John 8:44 Jesus remarks to the Jewish leaders, "You belong to your father, the devil . . . " Even more interesting is Matthew 16:23. In this passage, Peter (the great Apostle and early leader of the early Church) tells Jesus that Jesus will never suffer and be killed. Verse 23 reads: "Jesus turns and says to Peter, "Get behind me, Satan! You are a stumbling block to me; you do not have in mind the things of God, but the things of men." These are the purported words of the founder of Christian faith to his closest follower, the most prominent Apostle and early leader of the Christian movement.

Furthermore, the terms "devil," "Satan," "demon," etc., do not have fixed definitions, but take on various meanings and usage in religious discourse in various religious traditions. Within Christianity the understanding of these terms or concepts has undergone major revision in the course of history, and especially in the 19th and 20th centuries. Rudolf Bultmann, the famous and influential New Testament scholar of the early twentieth century, argued that the Bible (with its archaic ideas/language) has to be "demythologized." The modern world, with its modern science, knows that epilepsy, for example, is not caused by demon possession, as many pre-modern cultures with their various mythical views believed, and as even

some in the Church believed in pre-modern eras. So for Bultmann and many modern biblical scholars, theologians, and Church leaders, passages which refer to the devil, Satan, demon, etc. in particular have to be "demythologized" or reinterpreted if they are to be intelligible and meaningful for modern hearers. Forces of evil, demons, the Spirit of Satan are thus reinterpreted to mean, for example, destructive interpersonal dynamics within a community or spiritual/emotional/relational problems within an individual, rather than literal spiritual forces or a real personal devil.

The result of the process of change in Christian faith over the centuries is that the understanding of these terms (devil, Satan, demon, etc.) varies significantly between various different eras, different traditions, and different denominations/churches. This is even true within any given mainline denomination/church. In the United Methodist Church today there is great variance as to the [sic] both the acceptance and usage (some would not use the terms at all) of these terms (devil, demon, Satan, etc.) and also the understanding of both the meaning and existence of a "real" devil, Satan, demons, etc.

It is also important to note that in the official doctrinal standards of the United Methodist Church, the ARTICLES OF RELIGION and CONFESSION OF FAITH contained in the *Book of Discipline of the United Methodist Church 2000* (which presents the official teaching of the UM Church, as well as the law, polity, etc. by which the UM Church governs itself), there are no references to Satan or devil at all. John Wesley's (the founder of Methodism) *Standard Sermons* and *Notes on the New Testament* (also listed among the UM Church's official doctrinal standards) do refer to Satan and devil, but there is no

systematic and developed statement on Satan, the devil, demons, etc. in Wesley's *Sermons* and *Notes*. What this means is that it is doubtful that the United Methodist Church has an official doctrinal statement on the subject of the devil, Satan, demons, etc. because there is nothing clearly and definitively stated in the official doctrinal standards referenced in *The Book of Discipline of the United Methodist Church 2000*. In fact, United Methodist theologians (not to mention district superintendents, pastors and laity) today hold extremely diverse views on the subject of the devil, Satan, demons, etc.

In order for there to be an official United Methodist statement on the devil, Satan, demons, one of two events would have to take place: either 1.) GENERAL CONFERENCE, the representative body (it meets again in 2004) which speaks officially for Methodism, would have to add a statement to *The Book Of Discipline* consistent with the present standards of doctrine in accordance with "Article I" of the CONSTITUTIONAL "Restrictive Rules" (see para. 15. *Article IV* and para. 16 *Article I* of THE CONSTITUTION of the United Methodist Church in *The Book of Discipline of the United Methodist Church 2000*); or 2.) a BISHOP of the UM Church, while "presiding over an annual, central, or jurisdictional conference," could make an "episcopal decision" in response to a "written question of law" concerning what the United Methodist Church believes about the subject as found in *The Book of Discipline of the United Methodist Church 2000*. This "episcopal decision" would then be sent on to the JUDICIAL COUNCIL which would "affirm, modify, or reverse" the "episcopal decision." (See para. 49. *Article VII* of THE CONSTITUTION of the United Methodist Church in *The Book of Discipline of the United Methodist Church 2000*.)

It is my judgment as a United Methodist theologian and pastor is that this is also very unlikely and the process would be inconclusive. The United Methodist Church probably does not have (and probably will not have) an official understanding of devil, Satan, demons, etc. This means that these terms are subject to multiple and diverse interpretations, as is actually the case among United Methodist theologians, church officials, pastors and laity.

It is readily apparent that for a civil authority to determine within any specific ecclesiastical context whether the use of the term, "spirit of Satan," is defamatory, or to determine within the facts and circumstances of that specific ecclesiastical context whether the use of the term, "spirit of Satan," is legitimate and true or not, it is necessary to determine the meaning of the term for the religious community or body and the circumstances surrounding the use of this term. And this is especially true where the term is used in connection with an internal disciplinary proceeding dealing with a member of a United Methodist congregation. It is my opinion, as a United Methodist theologian, that before one could determine the meaning of the phrase, "spirit of Satan," one would have to engage in biblical interpretation (the Bible is the origin of the terminology in the Christian tradition and the United Methodist Church), theological and historical study (for the understanding of the devil, Satan, etc. undergo significant reinterpretation in the history of the Church, especially in the modern period), and research into, and interpretation of, the official *The Book of Discipline of the United Methodist Church 2000* (the official teaching, law and polity of the UM Church). The same kind of in-depth research would be required to determine the meaning and truth of the term, "spirit of Satan," when used by any other religious organi-

zation, tradition, denomination, or Church. No doubt, one would expect very different results and conclusions depending on the religious organization or body involved. The same term ("spirit of Satan, for example") could (and often would) have two very different meanings if it were used in a United Methodist disciplinary proceeding, than if the same term were used in a similar kind of disciplinary proceeding in a Southern Baptist congregation, for instance, and therefore the use of the term might be true in one instance and false in the other depending upon the particularities of each of the cases in question.

Since it is unlikely that the United Methodist Church has a "official" understanding of the phrase, one would inevitably derive multiple and diverse answers, simply because even the professional theologians of the United Methodist Church do not agree in their understandings of the devil, Satan, demons, etc. Within United Methodism, the phrase "spirit of Satan," could mean anything from a literal interpretation that someone is "possessed" by the devil to a figurative, "demythologized" understanding that there is a [sic] simply a destructive interpersonal dynamic operative in a particular religious community. And, of course, there is a wide range of other interpretations between the two. I can think of few more complex and disputed topics (involving biblical interpretation, the study of theology/history, and research into official Church doctrine, law, etc.) subject to multiple and diverse interpretations (not only in the United Methodist Church, but also in many other religious traditions and Christian denominations) than attempting to ascertain the meaning of such terms as devil, Satan, demons, spirit of Satan, etc. Nevertheless all of this will be involved, if a secular authority seeks to determine whether the use of the

phrase, "spirit of Satan," is defamatory, or under the circumstances of its use is legitimate and true, especially when the phrase is used by a church official in connection with a ecclesiastical disciplinary proceeding.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge.

Dated: August 15, 2001 /s/ Elmer M. Colyer
Elmer M. Colyer

[LOGO]

THE UNITED METHODIST CHURCH

WATERLOO DISTRICT

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814 Randolph St.
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Dr. Jerrold W. Swinton
District Superintendent

Janet Tyrrell
Administrative Secretary

Parsonage
171 Lovejoy Ave.
Waterloo, Iowa
50701
319-232-3830

Shell Rock United Methodist Church
204 S. Prairie
Shell Rock, IA 50670

Dear Brothers and Sisters in Christ,

A few months ago I attended worship in Shell Rock and I rejoiced to see so many young families in church. I was in despair when Jane Kliebenstein made an effort to whisper scornfully to me that this pastor must leave Shell Rock. There is such a promising future in those young families. If they are not carefully nurtured and loved, they will not likely remain, leaving the future of your congregation bleak indeed.

Pastor Julie has been under attack and undermined from the moment she set foot in Shell Rock. Julie says that she may have to leave the Shell Rock Church for health reasons. The Staff Parish Committee is trying to save her ministry by offering her a renewal leave. I honestly don't know how she has continued this long to do such an effective outreach. There are few pastors, in my experiences, who do a better job of reaching and nurturing young couples and engaging them in mission and outreach than Julie.

Pastor Julie no doubt has made mistakes some of which were the result of her being under almost constant siege. No way has she deserved the constant belittling and rumor campaign. Pastors in Shell Rock in the past were often attacked. Everything is in place for the attack and undermining of a new pastor as soon as they set foot in Shell Rock. This church is already known as a "clergy graveyard." Pogo once said, "We have seen the enemy and it is us!" In my experiences, blamers do not generally shoulder responsibility unless it serves their purpose. Blamers rather reserve the right to be in perpetual self-justifying judgement.

Folks, when is enough, enough? When will you stop the blaming, negative and unhappy persons among you from tearing down the spirit of Jesus Christ among you? Jesus faced this problem and tells the church to take action Matthew 18:15-17. You know whether a person has the spirit of Jesus or Satan by their fruits – see Matthew 7:15-20. I am distressed and perplexed why people have tolerance and compassion for anyone who habitually tears down the Body of Christ by habitually sowing discord and pain.

And then the same people show little compassion and support for the people who are the targets, and who eventually leave the church wounded and bewildered – taking the Shell Rock's future with them.

Friends, the fault in Shell Rock is not your pastors; it is your district superintendent, it is not the Conference. All of the aforementioned have supported you. Because of your unresolved issues, had you been in a denomination with a call system, you would have had difficulty obtaining a quality pastor within a year, if at all.

When the congregation of Shell Rock is ready to acknowledge they allowed the spirit of Satan to work in their midst, express some contrition and seek help – then help will come which can be followed with healing – see 1 John 3:4-10. Interim pastors and special resource persons are available. Then Shell Rock can recover the joyful energy of being the Body of Jesus Christ that builds each other up and will not allow anyone to be belittled, be the victim of vicious rumors or the like.

The Staff Parish Committee and I have called a Church Conference for Thursday, April 22 at 7:30. The Rev. Len Eberhart, the D.S. from the Dubuque District and myself will be present. First, I will ask you if you will be ready to set a policy of disciplinary action for any member who 1) undermines decisions of administrative committees of the Shell Rock Church 2) spreads rumors and circulates half-truths about the pastor or any members of the church. Offending persons can be reprimanded, stripped of offices, or asked to leave the Shell Rock United Methodist Church (¶236 *1996 Discipline*). The Shell Rock Staff Parish Committee will then propose that Jane Kliebenstein be stripped of church offices, it is understood that if she continues to cause dissension, she will next be asked to leave the Shell Rock UMC.

Secondly, the Church Conference needs to discuss how we can be proactive to resolve conflict, bring healing and find a missional goal for the new Millennium. If the congregation is not ready to take the problem in hand, then the Iowa Conference and I will be very reluctant to see a resident pastor appointed to Shell Rock.

Hopefully, the many loving members of this congregation, will step forward to restore a loving spirit of Jesus to this Body of Christ.

Sincerely,

/s/ JW Swinton
Rev. Jerrold W. Swinton
District Superintendent

/s/ Richard Kromminga
/s/ Karen Wahl
Shell Rock Staff Parish Committee
Rick Kromminga, Chairperson
Karen Wahl

/s/ Kay J. Lahr
/s/ Karen L. Peterson
Kay J. Lahr
Karen L. Peterson

IOWA DISTRICT COURT FOR BUTLER COUNTY

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN,	)	
Plaintiff,	)	No. LACV018800
vs.	)	
IOWA CONFERENCE OF THE UNITED METHODIST CHURCH; THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA; JERROLD W. SWINTON; RICK KROMMINGA; KAREN WAHL; KAY J. LAHR and KAREN L. PETERSON,	)	
Defendants.	)	

[Served June 20, 2001]

[Answered by: Jane Kliebenstein and Glen Kliebenstein, Plaintiffs]

INTERROGATORY NO. 2: With respect to your claim of defamation, state the following:

a. The date, place, and recipient or recipients of the alleged defamatory statement or statements;

b. Whether such statement or statements were oral or written;

c. If the statement or statements were oral, then set forth what was said and what you understand the bases were for making of such statements; and

d. If the statement statements were written, then attach a copy of said written statement or statements.

ANSWER:

(a) The defamatory statements are contained in a March 22, 1999 letter sent through the Shell Rock, Iowa Post Office with the letterhead from the United Methodist Church, Waterloo District. It is the Plaintiffs' belief and understanding that many of the members of United Methodist Church of Shell Rock, Iowa received the letter, as well as certain non-members of said Church, including the following individuals from Shell Rock, Iowa:

Tom, Lisa and Linsey Moffit
Roger Rassmussen
Shirley Stevenson
Shilotte Epley
Bill Hardee
Randy and Theone Kramer
Theresa Kratchman
Walter (Bud) Pruin
Hank Willson
Hazel Ballard (deceased)

A mailing list which was likely used in sending out the March 22, 1999 letter is produced in Plaintiffs' Response to Defendants' Request for Production of Documents.

(b) Written

(c) N/A

(d) Produced with Plaintiffs' Response to Defendants' Request for Production of Documents.

* * *

IOWA DISTRICT COURT FOR BUTLER COUNTY

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN, Plaintiff,	)	No. LACV018800
vs.	)	
IOWA CONFERENCE OF THE UNITED METHODIST CHURCH; THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA; JERROLD W. SWINTON; RICK KROMMINGA; KAREN WAHL; KAY J. LAHR and KAREN L. PETERSON, Defendants.	)	

[Served on August 3, 2001]

[Answered by: Jerrold Swinton, Defendant]

INTERROGATORY NO. 2: With respect to the March 22, 1999 letter, a copy of which is attached hereto and marked as Exhibit "A," please identify.

(a) The author or authors of said letter;

(b) The names and addresses of individuals who have consulted in providing information used in writing said letter, including the information provided by each such individual;

(c) The names and addresses of each and every person to whom the letter was sent, identifying which individuals were members and which individuals were not members of Shell

Rock United Methodist Church at the time said letter was sent;

(d) The number of drafts prepared with respect to said letter, stating the location of all earlier drafts of said letter, and setting forth any and all changes made from the earlier drafts to this letter.

ANSWER:

(a) I was the author of the letter;

(b) I did not consult with anyone with respect to the wording of the letter;

(c) I do not know. The letters were mailed out by the Shell Rock United Methodist Church with the understanding they would go to church members only;

(d) I prepared the letter on a computer and I know of no drafts. If mistakes were made in its preparation, they would have been corrected on the computer.

* * *

MOTION FILED
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No. 03-390

In The
Supreme Court of the United States

IOWA CONFERENCE OF THE UNITED METHODIST CHURCH, THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA, JERROLD W. SWINTON, RICK KROMMINGA, KAREN WAHL, KAY J. LAHR, AND KAREN L. PETERSON,

Petitioners,

vs.

JANE KLIEBENSTEIN AND GLEN KLIEBENSTEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*; AND BRIEF *AMICI CURIAE* OF PROFESSOR CARL H. ESBECK, PROFESSOR DOUGLAS LAYCOCK, AND THE JUSTICE FOUNDATION IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONER

Petitioners Iowa Conference of the United Methodist Church, The United Methodist Church of Shell Rock, Iowa, Jerrold W. Swinton, Rick Kromminga, Karen Wahl, Kay J. Lahr, and Karen L. Peterson have consented to the filing of this brief by *Amici curiae* Professor Carl Esbeck, Professor Douglas Laycock, and the Justice Foundation. Because Respondents Jane and Glen Kliebenstein have withheld consent, *Amici curiae* hereby move, pursuant to Supreme Court Rule 37.2(b), for leave to file their brief in support of Petitioner.

Professor Esbeck has taught law at the University of Missouri-Columbia since 1981 and has demonstrated a longstanding interest in First Amendment and church autonomy issues. He has published several articles regarding church autonomy and has testified before the Senate Committee on the Judiciary as the Senior Counsel to the Deputy Attorney General.

Professor Laycock has taught law at The University of Texas since 1981 and at The University of Chicago before that. He has appeared in this Court on behalf of parties and amici, sometimes supporting the claims of religious organizations and sometimes opposing them, depending on the facts and an independent assessment of constitutional principles. He has published widely on religious liberty issues in general and on the right to church autonomy in particular.

The Justice Foundation seeks to mobilize citizens and provide, through financial and service contributions, free legal representation in landmark cases, to promote limited

government, free markets, private property, and parental rights.

Professor Esbeck, Professor Laycock, and the Justice Foundation remain interested in landmark cases that define, interpret, or alter the present state of church autonomy law and First Amendment provisions for the freedom of self-governance of ecclesiastical bodies. This case presents such an issue.

Although *Amici curiae* inquired as to the reason Respondents denied permission to file this Brief, no reason was provided. (Correspondence regarding *Amici curiae* requests for consent have been filed in the office of the Clerk.) Petitioners have no financial interest in the Justice Foundation and are not related in any way to Professors Esbeck or Laycock. *Amici curiae* have their own unique and independent interests in the outcome of this case, particularly the application of the church autonomy doctrine in the context of civil slander accusations.

Amici curiae frequently examine First Amendment developments regarding church law and make presentations to the next generation of lawyers regarding these issues. Their background and experience in areas such as church-state relations and First Amendment protections are highly germane to the case before the Court. *Amici curiae* submit this brief to illustrate the diversity of opinions evident in the law and to discuss the policy ramifications of allowing the law to remain in a state of confusion. Certiorari review is needed to correct this confusion among the states and correct the erroneous view of the Iowa Supreme Court. Given the ramifications of this

case on church governance, *Amici curiae* request leave to file the attached brief in support of Petitioner.

Respectfully submitted by,

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QUESTION PRESENTED

In a defamation action arising out of a church disciplinary proceeding initiated by denominational authorities against a lay officer and member of the local Methodist church, does the First Amendment permit a jury to be instructed to determine the truth or falsity of the statement that plaintiff was causing division in the local church by acting in the "spirit of Satan"?

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INTERESTS OF *AMICI* AND AUTHORITY TO FILE[1]

1. Your *Amicus*, Carl H. Esbeck, has been a law school professor since 1981, is the *Isabelle Wade & Paul C. Lyda* Professor of Law, University of Missouri-Columbia since 1991, and is the *R. B. Price* Professor of Law, University of Missouri-Columbia since earlier this year. He has a longstanding interest in the First Amendment and church autonomy, and has published several articles which concern the law of church autonomy. The three most recent articles which bear on the law of church autonomy are: *The Establishment Clause as a Structural Restraint: Validation and Ramifications*, 18 J. OF LAW & POLITICS (UVA) 445 (2002); *Differentiating the Free Exercise and Establishment Clauses*, 42 J. OF CHURCH & ST. 311 (2000); *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 IOWA L. REV. 1 (1998).

2. Your *Amicus*, Douglas Laycock, holds the Alice McKean Young Regents Chair in Law at The University of Texas at Austin. He has served on the law faculties at Texas and at The University of Chicago since 1976. He has filed numerous briefs in this Court from a position of relative neutrality in the culture wars, sometimes supporting religious organizations and sometimes opposing them. He has published widely on religious liberty issues, including the first article that clearly distinguished church

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[1] Amici and their counsel drafted and funded this brief themselves. No other person drafted any part of the brief or made any financial contribution to its preparation or submission. Professors Esbeck and Laycock join this brief in their personal capacity as scholars, and of course neither the University of Missouri nor The University of Texas takes any position on the issues in this case.

autonomy claims from conscientious objection claims and clearly labeled each. *Towards a General Theory of the Religion Clauses: The Case of Church-Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373 (1981).

3. Your *Amicus*, The Justice Foundation, is a 501(c)(3) non-profit organization which provides free legal representation in landmark cases involving limited government, free markets, parental rights and private property rights. The Foundation seeks, through litigation and education, to protect the fundamental freedoms essential to the preservation of American society. The Foundation is deeply concerned about the free speech rights and free exercise of religious expression of students in the State of Texas.

STATEMENT OF THE CASE

Amici adopt by reference the statement of facts in the Petition For A Writ Of Certiorari filed by Petitioners.

ARGUMENT

This should have been an easy case. It was made hard only because this Court is long overdue to revisit its church autonomy law and to reaffirm, and thereby clarify, the manner by which the First Amendment applies to the line of cases where churches are sued in tort.

Plaintiff, Jane Kliebenstein, claims she was defamed when the Rev. Jerrold W. Swinton, a denominational official, sent a letter saying that continued inaction by the

congregants at Shell Rock Methodist Church permitted "the spirit of Satan to work in their midst," that they should "know whether a person has the spirit of Jesus or Satan by their fruits -- Matthew 7:15-20," and that they should no longer tolerate one who "tears down the body of Christ by habitually sowing discord" in their ranks.

Defendants raise truth as a defense. They also move to summarily dismiss for lack of subject matter jurisdiction,[2] and in support of the motion rely solely on the First Amendment.

To show that the statements in the Swinton letter are true, Defendants will offer evidence to a jury that Ms. Kliebenstein's conduct was tearing down the body of Christ[3] by creating division within the church and that such conduct is not in accord with the spirit of Jesus but with the spirit of Satan. The letter itself says how the congregants are to go about distinguishing between the two spirits, namely, that Ms. Kliebenstein shall be known by her fruits as measured by Matthew 7:15-20.[4]

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[2] Because the doctrine of church autonomy connotes a limit on civil power, a court dismissing claims that intrude into a church's autonomy will often do so by dismissing for lack of subject matter jurisdiction. *See, e.g., Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872). The nonjusticiable nature of such a claim when filed in federal court is, of course, not based on Article III of the Constitution but is attributable to the First Amendment.

[3] The "body of Christ" is a metaphor for the church. *See* The New Testament, Book of First Corinthians 12:27.

[4] The New Testament, Gospel of Matthew 7:15-20, issues a warning about false prophets who can be "recognized by their fruits."

To ask a civil court to pass on the truth or falsity of the assertions about Ms. Kliebenstein is to ask a quintessential religious question. In *United States v. Ballard*, 322 U.S. 78 (1944), this Court held that the truth or falsity of a religious claim can never be submitted to the scrutiny of a jury. *Ballard* was a prosecution for mail fraud involving claims to perform miraculous healing in return for money. In the course of reviewing jury instructions and convictions thereon, this Court said:

> Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.

Id. at 86-87. The *Ballard* holding, directly applicable here, is not an isolated principle of law. Rather, in a variety of contexts this Court has held that civil courts must avoid fashioning legal rules that cause them to probe into the religious meaning of church-related words, practices, and events.[5]

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[5] *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality) (stating that for authorities to troll through a religious institution's beliefs in

(Continued on following page)

Unlike voluntary organizations generally, religious bodies are acknowledged to have a level of autonomy from government intrusions that would otherwise invade subject matters within the province of the church.[6] This is a logical implication of the separation of church and state.[7]

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order to identify if it is "pervasively sectarian" is offensive and contrary to precedent); *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 843-44 (1995) (rejecting argument that university should distinguish between evangelism, on the one hand, and the expression of religious view on secular subjects, on the other); *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 336 (1987) (recognizing a problem should government attempt to divine which jobs are sufficiently related to the core of a religious organization so as to merit exemption from statutory duties); *id.* at 344-45 (Brennan, J., concurring) (same); *Widmar v. Vincent*, 454 U.S. 263, 269-70 n.6, 272 n.11 (1981) (holding that inquires into religious significance of words or events are to be avoided); *Walz v. Tax Comm'n*, 397 U.S. 664, 674 (1970) (holding that it is desirable to avoid entanglement that would follow should tax authorities evaluate the temporal worth of religious social welfare programs); *see also Rusk v. Espinosa*, 456 U.S. 951 (1982) (mem.) (striking down charitable solicitation ordinance that required officials to distinguish between "spiritual" and secular purposes underlying solicitation by religious organizations).

[6] The rationales for the rule are: (i) civil officials are unschooled in theology and thereby are not competent to resolve disputes concerning religious doctrine, nor to properly interpret religious documents and canon law; (ii) for law to side with one faction of a religious dispute risks "establishing" the prevailing faction and inhibits change or reform in doctrine; (iii) both clerics and lay members of a religious group have voluntarily joined the organization, thereby giving implied consent to the internal church resolution of disputes; and (iv) autonomy allows for churches to continue their historically pivotal role as a mediating institution guarding against state absolutism.

[7] *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 730 (1872) ("The structure of our government has, for the preservation of civil liberty rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority.").

Application of this principle can usefully be divided into four topical areas where civil courts are without jurisdiction: (1) questions of doctrine, changes in doctrine, and the resolution of doctrinal disputes;[8] (2) choices about ecclesiastical polity and its administration, including matters concerning the interpretation of an organization's organic documents and bylaws;[9] (3) the selection, credentialing, promotion, and discipline of clerics and other ecclesiastics;[10] and (4) the admission, discipline, and excommunication of church members.[11]

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[8] *Maryland & Va. Churches of God v. Church at Sharpsburg*, 396 U.S. 367, 368 (1970) (per curiam) (avoid doctrinal disputes); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Church*, 393 U.S. 440, 449-51 (1969) (rejecting rule of law that discourages changes in doctrine); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 725-33 (1872) (rejecting implied-trust rule because of its departure-from-doctrine inquiry).

[9] *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-24 (1976) (civil courts may not probe into church polity); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Church*, 393 U.S. 440, 451 (1969) (civil courts forbidden to interpret and weigh church doctrine); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam) (First Amendment prevents judiciary, as well as legislature, from interfering in ecclesiastical governance of Russian Orthodox Church); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 119 (1952) (same); *Shepard v. Barkley*, 247 U.S. 1, 2 (1918) (aff'd mem.) (courts will not interfere with the merger of two Presbyterian denominations).

[10] *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-20 (1976) (civil courts may not probe into defrocking of cleric); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (courts not to probe into clerical appointments); *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929) (declining to intervene on behalf of petitioner who sought order directed to archbishop to appoint petitioner to ecclesiastical office).

[11] *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139-40 (1872) ("This is not a question of membership of the church, nor of the rights of

(Continued on following page)

The same principle of refusing to adjudicate has been followed by this Court when refining its analysis under the Free Exercise Clause. Hence, a civil court may not distinguish "central" religious beliefs or practices from all others, protecting only the former.[12] Likewise, a claimant may disagree with co-religionists, or be unsure or wavering,[13] without losing free-exercise protection. These questions are nonjusticiable, for the civil courts "are not arbiters of scriptural interpretation." *Thomas v. Review Board*, 450 U.S. 707, 716 (1981).

The state supreme court here acknowledges that a question of fact for trial is the truth or falsity of whether Ms. Kliebenstein's behavior was that of the "spirit of Satan." Obviously this is a religious question. In order to

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members as such. It may be conceded that we have no power to revise or question ordinary acts of church discipline, or of excision from membership. . . . [W]e cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off."); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872) (finding no court jurisdiction as to church discipline or the conformity of members to the standard of morals required of them); *see Order of St. Benedict v. Steinhauser*, 234 U.S. 640, 647-51 (1914) (so long as individual voluntarily joined a religious group and is free to leave at any time, religious liberty is not violated and members are bound to the rules consensually entered into such as vow of poverty and communal ownership of property).

[12] *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988) (rejecting free-exercise test that "depend[s] on measuring the effects of a governmental action on a religious objector's spiritual development"); *United States v. Lee*, 455 U.S. 252, 257 (1982) (rejecting government's argument that free-exercise claim does not lie unless "payment of social security taxes will . . . threaten the integrity of the Amish religious belief or observance").

[13] *Thomas v. Review Bd.*, 450 U.S. 707, 715-16 (1981).

skirt that conclusion, and after consulting three general-use dictionaries, the state court found that "spirit" and "Satan" can have secular as well as religious meanings.[14] The implication is that at trial Defendants are to offer evidence on the truth of the statements based on their secular meaning.

This makes no sense. The Defendants cannot with sincerity defend the truth of the Swinton letter except in the context in which it was written, namely, its religious meaning. Anything else will be a sham. Accordingly, on remand the Defendants are put to an impossible choice. They either face the task of proving something never intended, namely the secular meaning of "spirit of Satan" as a truthful characterization of Ms. Kliebenstein, or proving the religious meaning of "spirit of Satan" as a truthful characterization of Ms. Kliebenstein. The first is disingenuous, the second entails the loss of a longstanding First Amendment restraint on civil courts sitting in judgment over religious disputes.

The Iowa Supreme Court acts as if the purpose of the church autonomy doctrine is to protect civil courts from having to decide religious questions. That gets the First Amendment exactly backwards. The purpose of the doctrine is to protect churches from the civil courts. When made aware of the doctrine of church autonomy, the state court here sought to avoid it by devising an "escape hatch," namely it found or invented some secular fragment in the

[14] There apparently was no attempt to determine a dictionary definition of the phrase "spirit of Satan." The state supreme court looked up definitions of "devil," "satanic," and "satanism," albeit these words were not used in the Swinton letter.

case and then assumed that focusing on this secular fragment would avoid the religious question and would not trample on religious exercise. The lower court's evasion is not even a sensible one; it ordered trial on the truth of the Swinton letter based on a hypothetical secular interpretation completely different from the intended religious interpretation.

It has been 59 years since the decision in *Ballard*, and over twenty-five years since this Court's last decision where a lower civil court directly intervened into a church disciplinary proceeding. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) (holding that civil courts cannot adjudicate claims that a church judicatory failed to follow its own procedures while disciplining a cleric, or whether such procedures comport with American notions of due process and fairness); *see also Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1 (1929) (refusing to adjudicate claim that archbishop had wrongfully breached agreement to appoint plaintiff to an ecclesiastical office).

A distressing number of state supreme courts are at a loss when it comes to understanding and applying the law of church autonomy to torts. *See* Defendants' Petition for a Writ of Certiorari pages 14-18 (collecting cases). The Iowa Supreme Court decision here is both illustrative and all too common. By way of contrast, the lower federal courts seem to generally understand and properly apply the doctrine. *See, e.g., University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002) (holding that NLRB does not have jurisdiction over religious college and that board may not fashion a "substantial religious character" test to determine whether the college is or is not sufficiently religious to be protected by First Amendment church autonomy doctrine); *EEOC v. Roman Catholic Diocese of*

Raleigh, N.C., 213 F.3d 795, 800-02 (4th Cir. 2000) (dismissing for First Amendment reasons a Title VII sex discrimination claim by minister of music for failure of church to appoint her as an elder and for her removal from ministerial status). One could speculate as to why so many state high courts are "totally at sea" when it comes to church autonomy and claims in tort: given the nature of their docket, they are unfamiliar with First Amendment law generally; or church autonomy law is rarely taught in law schools and thus not well understood; or it has been so long since this Court has taken up a church autonomy case that the state courts are unsure of the status of the principle. Whatever the reason for the disarray, the present lack of uniformity and disregard of church autonomy law cries out for this Court's attention.

CONCLUSION

Rulings like the one here by the Iowa Supreme Court are proliferating at an alarming rate. This Court's plenary review is sorely needed to instruct state courts in the first principles of church autonomy law and to reign in those state courts, not few in number, that are proceeding in disregard of the First Amendment's provision for the freedom of self-governance of ecclesiastical bodies.

A number of churches, most notoriously the Catholic Archdiocese of Boston, have recently come in for severe criticism for inaction in the face of misdeeds by lower-level clerics and other officers. In the case here we have a denominational official in Iowa starting to take the necessary action where there has been misbehavior by a lay

officer and member. Instead of being praised, the Defendants get hit with a tort claim. It cannot be the law that a church's beginning steps to do the right thing so as to protect other people and itself from harm ends up getting punished. Such a result is neither in the long-term interest of society, which needs public order, nor in the interest of religious freedom.

Amici urge this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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MOTION FILED

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In The

Supreme Court of the United States

IOWA CONFERENCE OF THE UNITED METHODIST CHURCH, THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA, JERROLD W. SWINTON, RICK KROMMINGA, KAREN WAHL, KAY J. LAHR, and KAREN PETERSON,

Petitioners,

v.

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Iowa Supreme Court

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF FOR *AMICUS CURIAE* SOUTHERN BAPTIST CONVENTION SUPPORTING PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rule 37.2(a) and (b) of the Rules of the Supreme Court of the United States, the Southern Baptist Convention respectfully requests leave to file the accompanying *amicus curiae* brief, which is submitted in support of petition for a writ of certiorari to the Iowa Supreme Court.

Petitioners Iowa Conference of the United Methodist Church, The United Methodist Church of Shell Rock, Iowa, Jerrold W. Swinton, Rick Krommings, Karen Wahl, Kay J. Lahr, and Karen Peterson have consented to the filing of this brief. Respondents Jane Kliebenstein and Glen Kliebenstein have not consented.

As set forth in the brief below, since its organization in 1845 in Augusta, Georgia, the Southern Baptist Convention has grown to over 16 million members who worship in more than 42,000 churches in the United States. Southern Baptists sponsor approximately 5,000 home missionaries serving the United States, Canada, Guam and the Caribbean, as well as more than 5,000 foreign missionaries in 153 nations of the world. The term "Southern Baptist Convention" refers to both the denomination and its annual meeting.

The Southern Baptist Convention cherishes and defends religious liberty, and denies the right of any secular or religious authority to impose a confession of faith upon a church or body of churches. As a member of a society founded upon the exercise of religion free from civil interference, the Southern Baptist Convention urges review of the recent decision of the Iowa Supreme Court in *Kliebenstein v. Iowa Conference of the United Methodist*

Church. The holding in *Kliebenstein* threatens to curb religious liberties and promote civil redress for private injury above judicial abstention from ecclesiastic affairs. Continued intrusion by civil authorities into the truth, falsity, or propriety of religious doctrine and belief threatens to erode the religious freedoms fundamental to the Constitution of these United States.

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SUMMARY OF ARGUMENT[1]

Illustration: A salesman embarks on a business trip across the United States. Beginning in New York, he devises to travel south to Alabama and the surrounding states; turn north to Iowa and the Midwest; proceed west to Oregon and the Pacific Coast; and end in California.

In each state along his journey, the businessman – a devout follower of the American Bible Church – stops to worship at a local parish of that denomination. Signs posted proudly on the church doors proclaim "Non-Members Welcome."

The parishioners prove welcoming indeed, and the clergy's homilies inspirational. Yet remarkably, each and every sermon concludes with the local pastor's pointed admonition:

"Be vigilant, for the Serpent is among you, seeking to devour you."

The salesman grows increasingly unnerved by the apparent coincidence. By the time his trip ends in California, he is convinced that the pastors' bidding was directed at him. Irate, the businessman retains counsel to determine whether he has a valid claim against the Church and its pastors.

His lawyer, after exhaustive research, reports a mixed conclusion.

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[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members or its counsel made a monetary contribution to the preparation and submission of this brief.

"The good news," she advises, "is that you may sue for defamation in at least seven states." She pauses.

"Unfortunately, it appears in the remaining states that you may very well be the Antichrist."

* * *

The outcome of the hypothetical sales trip is not inconceivable given the discordant application of federal constitutional law by state courts throughout the nation. When debating whether to exercise jurisdiction over private claims for defamation against a church or its officials, state courts have applied varying criteria, considered *ad hoc* combinations of constitutional principles, and reached vastly disparate conclusions.

No matter whether the courts' threshold inquiry is couched in terms of "subject matter jurisdiction" or "privilege," the Free Exercise Clause or the Establishment Clause, their holdings are predictably irreconcilable. The result is an amalgam of case law so lacking in consistency that "one of Satan's choicest tools" may sue for defamation in California, but an Ohio court is without jurisdiction to hear the claims of a parishioner who is "in league with Satan."

At the heart of the dilemma is the infiltration of church doctrine inherent in judicial review of ecclesiastic expression. While this Court has long acknowledged the constitutional bar on civil determination of religious doctrine, many lower courts have abrogated that restriction by examining clerical speech in a falsely "secular" light. The recent decision of the Iowa Supreme Court in *Kliebenstein v. Iowa Conference of the United Methodist Church* underscores the instant need for this Court's guidance in restraining judicial review of religious speech.

Kliebenstein holds that a biblical exhortation in a church mailing is actionable under private defamation law because its reference to the "spirit of Satan" is susceptible to secular interpretation. May a civil court infringe on church autonomy if *any* secular meaning can be ascribed to religious expression?

First Amendment prohibitions on civil inquiry into church doctrine mandate the answer "no." The innate religious content of the communication in *Kliebenstein*, complete with biblical reference, deprives a civil court of jurisdiction under constitutional principles of church autonomy. To adjudicate this case would require a court to wade impermissibly into religious doctrine and usage codifying the standards and morals required of a member of the United Methodist Church.

Through six degrees of interpretation, however, the Iowa Supreme Court sidestepped a collision of church and state. Instead of concluding that the ecclesiastic speech is immune from judicial scrutiny, the court assigned itself the peculiar task of determining whether the phrase "spirit of Satan" is susceptible to a secular translation. Eschewing the Bible for the dictionary, the court equated "Satan" with "Devil"; "Devil" with "fiend"; "satanic" with "cruelty"; and "spirit" with "mood." Thus, the Iowa Supreme Court held that the biblical reference to the "spirit of Satan" subjects the church to a private defamation action because a jury might consider the phrase without undergoing "theological reflection."

The unworkable standard elicited in *Kliebenstein* renders the church-autonomy doctrine a legal fiction. One struggles to conceive of a sectarian phrase that is not capable of secular meaning. With the appropriate dictionaries at

hand, even "Christ" is "the Messiah"; the "Messiah" a "messiah"; and a "messiah" a "guardian angel." Thus, under *Kliebenstein*, a pastor who rebukes the unfaithful for "denouncing Christ" is subject to a lawsuit for defaming those who admonish angels. The linguistic exercise – while a lexicographer's dream – is one in futility.

When properly applied, First Amendment principles require the reverse standard: that civil courts lack jurisdiction over defamation claims demanding review of the truth or falsity of religious expression. The question of jurisdiction must turn on whether the offending speech is rooted in religion when *published*, and not whether it is capable of any secular meaning after semantic remodeling.

Moreover, it is irrelevant whether a religious publication reaches the eyes or ears of "non-members" of a church. If an expression is divested of constitutional protection the moment it escapes the confines of the church, then virtually no religious statement is immune from scrutiny. A declaration in a religious text pronouncing nonbelievers "sinners" will support a defamation claim if non-members can purchase the text in a religious bookstore. A pastor's sermon, likewise, will be grounds for civil action if the church permits non-members to attend worship services. Judicial review of theology will supplant church autonomy.

This Court should grant the petition for a writ of certiorari and clarify the First Amendment protection afforded religious speech in the context of tort action for defamation. Without an articulated standard for abstention, civil encroachment on church autonomy threatens to erode the fundamental freedom of religious expression.

ARGUMENT

1. The Court has never considered church autonomy and First Amendment principles in the context of defamation.

While the Court has applied First Amendment jurisprudence to restrict judicial intervention in church property disputes, *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-11 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), tort claims for defamation in matters of religious discourse or discipline implicate similar but additional constitutional concerns that the Court has never addressed. *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 714 N.E.2d 253, 261-62 (Ind. Ct. App. 1999) (noting that the "neutral principles of law" approach enunciated in *Presbyterian Church*, *supra*, and *Jones v. Wolf*, *supra*, has been applied "only to disputes involving church property").

The misguided standard applied in *Kliebenstein*, and in opinions reaching the same conclusion, merits this Court's review. The issues of civil abstention and church autonomy, privilege and publication, and secular inquiry into the truth or falsity of religious doctrine and beliefs are all raised by the Iowa Supreme Court's ruling in *Kliebenstein*.

2. State courts considering constitutional principles of religious freedom are split in deciding whether and when to exercise jurisdiction in "religious defamation" actions.

State courts are split on the issue of exercising jurisdiction over defamation actions against a church. Those courts declining to exercise jurisdiction properly decide at

the threshold whether religious doctrine is implicated by the offending speech and, if so, go no further. Courts employing the reasoning of *Kliebenstein*, however, extend jurisdiction whenever secular connotation may be imputed to religious expression.

The right to practice religion free from governmental interference is a rudiment of constitutional law. Principles of religious freedom codified by the First Amendment have "secured religious liberty from the invasion of civil authority." *Everson v. Bd. of Educ. of Ewing Township*, 330 U.S. 1, 15 (1947) (citing *Watson v. Jones*, 80 U.S. 697, 730 (1871)). When balancing freedom of religion with competing interests, "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

Civil adjudication of a defamation claim brought against a church or its officers for religious speech implicates that balance of conflicting interests. Defamation, a creature of common law, protects against personal injury to reputation and is no stranger to combat with First Amendment principles of free speech. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 11-22 (1990) (discussing development of defamation law and balancing against constitutional guarantees of freedom of speech); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 334-48 (1974); *New York Times Co. v. Sullivan*, 376 U.S. 254, 272-73 (1964). The adjudication of private defamation actions and the constitutional hurdles imposed by the freedoms of speech and press – including elements of fact or opinion, truth or falsity, innocence or malice – has proper audience in judge and jury.

The issue presented in *Kliebenstein*, however, pits civil redress for private injury against civil abstention from matters of religion. Whereas judicial scrutiny may protect free speech in the course of a defamation suit, *Milkovich*, *supra*, at 21, the freedom *from* judicial scrutiny is the very privilege afforded religious expression. *Watson*, *supra*, at 728, 730; *Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369-70 (1970) (civil determination of religious doctrine violates First Amendment). It follows that a civil court's narrow focus in a defamation action against a church is whether the offending speech is of a religious nature or concern. When church doctrine or discipline is implicated, the First Amendment divests the court of jurisdiction over the dispute.

A. Courts declining to exercise jurisdiction properly focus on whether the offending speech originates within the "realm of religion."

The logic of judicial abstention from tort actions for defamation against a church is presented best by the Supreme Court of Hawaii in *O'Connor v. Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994). In a defamation action against the Roman Catholic Church by a member for allegedly false statements leading to his excommunication, the court acknowledged that the "ecclesiastical abstention" doctrine inherent in the First Amendment applies to the states through the Fourteenth Amendment, *id.* at 364, and that First Amendment protection of religious freedom prohibits a civil court's "extensive inquiry . . . into religious law and polity." *Id.* at 367. The court next considered whether the exercise of jurisdiction over O'Connor's claims would constitute secular adjudication of "underlying controversies over

religious doctrine." *Id.* (citing *Milivojevich*, *supra*, at 709-10).

The Supreme Court of Hawaii first addressed the offending speech, which regarded O'Connor's excommunication and included statements regarding his "wickedness," disloyalty to the Pope, and propensity for "schism." *Id.* at 367-68. When considered in the context of a private claim for defamation, the court concluded that the statements were not amenable to judicial review:

> . . . It is apparent that, to determine the truth or falsity of the statements, a state court would have to inquire into church teachings and doctrine. The comments attributed to the [church defendants] and alleged to be defamatory *are phrased in terms of religious doctrine or church governance*. The question whether the statements attributed to the [church defendants] correctly reflect the church's views *can be answered only by determining doctrinal correctness or by analyzing church law*; these are determinations that cannot be made by civil courts. Because the law knows no heresy and is committed to the support of no dogma or the establishment of any sect, *Milivojevich*, 426 U.S. at 710-711, . . . the secular law cannot determine [O'Connor's claims]. ***These are all matters that are patently and obviously within the realm of religious doctrine and polity; adjudication of them is clearly beyond the purview of civil courts.***

Id. at 368 (emphasis added). Thus, the court held that civil adjudication of the defamation action was prohibited by the Constitution. *Id.* at 367.

The Hawaii court's reasoning soundly applies First Amendment protection to speech that originates "within

the realm" of religious doctrine and discipline. Notably, the publication of the religious speech in *O'Connor* in a Catholic newspaper was irrelevant to the court's determination, whether the publication extended beyond the confines of the Roman Catholic Church or not. *Id.* and n.11 (publication of alleged defamatory statements in *The Wanderer* newspaper had no bearing on the court's decision).

Most important, *O'Connor* demonstrates the inherent impossibility of secular determination of the "truth or falsity" of religious statements, an essential element to any defamation action. *See Milkovich v. Lorain Journal Co.*, 497 U.S. at 11 (quoting RESTATEMENT (SECOND) OF TORTS § 566, cmt. a (1977)) ("truth is a complete defense to a suit for defamation"); *see also* 50 AM. JUR.2d Libel and Slander § 27 (2003) ("To be defamatory, a statement must be false."). The "truth or falsity" inquiry germane to a defamation action necessitates, in cases involving religious speech, civil adjudication of the truth of religious doctrine and belief. This Court has long prohibited civil inquest into "*all questions* concerning the truth or falsity of the religious beliefs or doctrines" of a litigant. *U.S. v. Ballard*, 322 U.S. 78, 87 (1944) (civil courts undertaking to adjudicate truth or falsity of religious belief enter "forbidden domain") (emphasis added).

Cases in line with *O'Connor* espouse the same principles of church autonomy, though they often vary in their reliance on specific constitutional provisions and lines of jurisprudence. *See, e.g., Downs v. Roman Catholic Archbishop of Baltimore*, 683 A.2d 808, 811-14 (Md. Ct. Spec. App. 1996); *Hadnot v. Shaw*, 826 P.2d 978, 987 (Okla. 1992) ("The First Amendment will protect and shield the religious body from liability for the activities carried on pursuant to the exercise of church discipline.

Within the context of ecclesiastical discipline, churches enjoy an absolute privilege from scrutiny by the secular authority."); *Schoenhals v. Mains*, 504 N.W.2d 233, 235-36 (Minn. Ct. App. 1993) (examination of the truth of religious statements would require an "impermissible inquiry into Church doctrine and discipline") (citing Establishment Clause); *Rasmussen v. Bennett*, 741 P.2d 755, 758-59 (Mont. 1987) (citing Free Exercise Clause); *Brazauskas*, *supra*, 714 N.E.2d at 261-62 (citing First Amendment jurisprudence but considering "neutral principles of law" approach in context of tort actions).

These authorities correctly support judicial abstention from religious matters in the ambit of defamation. *See also* Carl H. Esbeck, *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 Iowa L. Rev. 1 (1998); Carl H. Esbeck, *Tort Claims Against Churches and Ecclesiastical Officers: The First Amendment Considerations*, 89 W. Va. L. Rev. 1, 16 (1986); Douglass Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373 (1981) (Free Exercise Clause as source of church autonomy).

B. Courts exercising jurisdiction improperly apply "neutral principles of law" to permit secular review of religious expression.

In stark contrast, several courts have held that speech, doctrine, or discipline in the "realm of religion" is not immune from judicial scrutiny by examining religious affairs through a secular lens. *See Berger v. Temple Beth-El of Great Neck*, 756 N.Y.S.2d 94, 96 (N.Y. App. Div. 2d Dep't 2003) (jurisdiction exercised in defamation action against church); *McAdoo v. Diaz*, 884 P.2d 1385 (Alaska 1994)

(jurisdiction exercised in defamation action against church official); *Marshall v. Munro*, 845 P.2d 424, 427-28 (Alaska 1993) (jurisdiction exercised in defamation action against church minister); *McNair v. Worldwide Church of God*, 242 Cal. Rptr. 823, 831-39 (Cal. Ct. App. 1987) (jurisdiction exercised in defamation action against church and church officials); *Murphy v. Harty*, 393 P.2d 206 (Ore. 1964) (jurisdiction exercised in defamation action between church officials); *see also Yates v. El Bethel Primitive Baptist Church*, 847 So.2d 331 (Ala. 2002) (jurisdiction exercised in dispute among church officials regarding election of officials); *Bear v. Reformed Mennonite Church*, 341 A.2d 105 (Pa. 1975) (jurisdiction exercised in action in equity against church for excommunication and "shunning"). Many of these cases appear the result of wayward extension of the "neutral principles of law" doctrine espoused by this Court in resolving church property disputes, while others mistakenly apply freedom of speech standards to civil disputes implicating the free exercise of religion.

In *Berger v. Temple Beth-El of Great Neck*, for instance, Berger sued a synagogue and its executive board for defamation after a statement about him was published to the entire congregation. 756 N.Y.S.2d at 95. The Supreme Court, Appellate Division, held this year that jurisdiction was proper over Berger's claim because "the instant defamation action can be settled by the application of *neutral principles of law*, and does not implicate matters of religious doctrine and practice." *Id.* at 96 (citing *Jones v. Wolf*, 443 U.S. 595 (1979)) (emphasis added).

Likewise, in *McAdoo v. Diaz*, the Alaska Supreme Court considered a former church volunteer's defamation claim against the pastor who dismissed her. 884 P.2d at

1390-91. The court held that jurisdiction over the defamation action was appropriate because the inherent "truth or privilege" inquiries – while requiring "some general inquiry into the duties of a pastor" – did not "touch the merits of any core religious questions." *Id.*; *see also Richelle v. Roman Catholic Archbishop*, 130 Cal. Rptr.2d 601, 615 (Cal. Ct. App. 2003) (religious organizations subject to jurisdiction "where liability can be adjudicated on the basis of *neutral principles* requiring no inquiry into the validity of a religious belief or practice") (citing *U.S. v. Ballard*, 322 U.S. 78 (1944)) (emphasis added).

The California Court of Appeal in *McNair v. Worldwide Church of God* took a unique approach when faced with the question "whether the free exercise clause of the First Amendment of the United States Constitution bars a defamation suit brought against a church and two of its ministers for statements made during the course of a theological controversy." 242 Cal. Rptr. at 825. After a full discussion of constitutional principles of religious freedom, the California court *exercised* jurisdiction over the defamation action despite acknowledging the protection of religious speech afforded by the Free Exercise Clause. *Id.* at 830-31.

Rather than dismissing the defamation claim – involving statements made between two clerics "*during the course of a theological controversy*" – for lack of jurisdiction, the court turned to principles of constitutional law concerning defamation and freedom of *speech*. *Id.* at 831-32 (emphasis added). With the professed intent to "balance the reputational interest of our citizenry against the interests protected by the First Amendment's free exercise of religion clause," the California court examined this

Court's decisions in *Gertz v. Robert Welch, Inc.* and *New York Times Co. v. Sullivan* addressing "actual malice" in defamation actions brought by public figures. *Id.* The court concluded:

> Our accommodation of the competing interests of our society – one protecting reputation, the other, the free exercise of religion – requires that we hold that in order for a plaintiff to recover damages for defamatory remarks made during the course of a doctrinal explanation by a duly authorized minister, he/she must show, by clear and convincing evidence, that the defamation was made with constitutional malice. . . .

Id. at 833. Thus, the California court ensured governmental entanglement in affairs of religion by creating a "heightened standard" for defamation actions between or against a church or its officials that provides artificial protection from civil inquiry into religious statements or belief. Judicial review of the "truth or falsity" of religious speech, forbidden ground for civil inquiry, is not subverted by heightening a plaintiff's burden of proof.

Whether by faulty reasoning or slipshod extension of inapplicable standards, the exercise of jurisdiction by civil courts in the "realm of religion" illustrates the need for this Court's intervention in the protection of religious freedom.

C. The Iowa Supreme Court's reasoning in *Kliebenstein* exacerbates civil infringement on church autonomy by translating religious speech so that it may *become* secular.

If the holdings of the cases discussed above threaten to erode religious liberty, the Iowa Supreme Court's decision in *Kliebenstein v. Iowa Conference of the United Methodist Church* stands to eradicate it. That the Iowa court exercised jurisdiction over a defamation claim brought against a church for religious communication in a disciplinary matter – complete with Bible reference – is wrong enough. 663 N.W.2d 404, 406-08.

More disturbing, the court went to such measures to square the exercise of jurisdiction with constitutional principles that it actually *translated* religious speech into secular speech to answer its "dispositive question," whether "the phrase 'spirit of Satan' has a secular meaning that could be applied in a civil suit for defamation without treading on – or wading into – religious doctrine," in the affirmative. *Id.* at 407.

It remains unclear how the Iowa Supreme Court managed to frame its "dispositive question on appeal." The proper question, in light of First Amendment principles and constitutional jurisprudence, is whether the phrase "spirit of Satan" implicates theological doctrine and belief that is immune from secular scrutiny for its "truth or falsity." *U.S. v. Ballard*, 322 U.S. at 87; *Watson v. Jones*, 80 U.S. at 730; *Md. & Va. Eldership of the Churches of God*, 396 U.S. at 369-70. Semantic wizardry performed in a search for secular meaning, transforming biblical reference to dictionary linguistics, constitutes judicial review forbidden by the Constitution.

Likewise, the Iowa Supreme Court's focus on publication of the church mailing in *Kliebenstein* to non-members on the church's mailing list is misguided. *Kliebenstein*, 663 N.W.2d at 406-07. The appropriate question must be whether the communication originated within the "realm of religious doctrine and polity," *O'Connor*, *supra*, at 368, and not whether it escaped the province of church membership. Publication only to church "membership" does not imbue the religious speech with any more religious character; and conversely, publication to non-members cannot transform religious speech into secular. The forbidden inquiry of a civil court into the truth or falsity of religious doctrine, disseminated within the realm of the church, is not abrogated by publication to a non-member.

At bottom, the mere fact that the Iowa Supreme Court sifted through lexicon to arrive at an appropriate secular definition of the "spirit of Satan" deviates from fundamental principles of church autonomy. But even more basic, the court's ultimate inquiry – focusing "not on the meaning of 'spirit of Satan' within an ecclesiastical context" but on "whether the phrase has a secular meaning" – is at odds with principles of defamation law mandating that "the publication must be considered as a whole, in the sense it would be understood by the readers to whom it was addressed." *Klayman v. Segal*, 783 A.2d 607, 614 (D.C. Cir. 2001) ("The concept of context 'requires that the court examine the statement in its totality in the context in which it was uttered or published. The court must consider all the words used, not merely a particular phrase or sentence.") (citing RESTATEMENT (SECOND) OF TORTS § 563: Defamatory Communications, cmt. e (1977)) ("words, whether written or spoken, are to be construed together with their context").

To take the phrase "spirit of Satan" out of its religious context and transform it into secular nothingness – rendering the speech subject to civil inquiry for truth or falsity – is to perform a work of legal fiction and create a dark precedent for the decline of church autonomy.

CONCLUSION

The tenets of church autonomy protect against civil inquest into religious concerns. The Iowa Supreme Court's decision in *Kliebenstein*, and the decisions of state courts exercising jurisdiction over religious defamation claims, violate First Amendment protection of the free exercise of religion embodied in decades of constitutional jurisprudence. The Southern Baptist Convention respectfully requests that the Court grant the petition for a writ of certiorari and repair the wall between church and state.

Respectfully submitted,

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* Counsel note with appreciation the contributions to this brief of Todd B. Baker, an associate at Haynes and Boone, LLP in Dallas, Texas.

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In The
Supreme Court of the United States

IOWA CONFERENCE OF THE UNITED METHODIST CHURCH, THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA, JERROLD W. SWINTON, RICK KROMMINGA, KAREN WAHL, KAY J. LAHR, and KAREN L. PETERSON,

Petitioners,

v.

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE; AND BRIEF AMICUS CURIAE OF GUIDEONE INSURANCE COMPANY IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

Petitioners Iowa Conference of the United Methodist Church, The United Methodist Church, The United Methodist Church of Shell Rock, Iowa, Jerrold W. Swinton, Rick Kromminga, Karen Wahl, Kay J. Lahr, and Karen L. Peterson consented to the filing of this brief by amicus curiae GuideOne Insurance Company ("GuideOne"). Respondents, Jane and Glen Kliebenstein, withheld consent, even though it was requested. GuideOne hereby moves, pursuant to Supreme Court Rule 37.2(b), for leave to file an amicus curiae brief in support of Petitioners.

Founded in 1947 and headquartered in West Des Moines, Iowa, GuideOne is one of the leading insurers of churches in the United States. GuideOne is licensed to do business in all 50 states and markets its products and services through a network of more than 2,000 independent and career agents. The company carries "Excellent" ratings from A.M. Best Company.

GuideOne insures over 50,000 houses of worship, representing about 20% of the market for non-Catholic, non-Mormon, Christian houses of worship; but also insures synagogues, Buddhist, and Hindu temples. GuideOne markets coverages to houses of worship, but also offers general liability, directors and officers, employment practices, and various property and auto coverages. In connection with its insurance products, GuideOne operates the Center For Risk Management ("CRM"), an organization formed for the explicit purpose of providing risk management services and advice to churches. Through the CRM, GuideOne provides advice to churches on, for example, handling money, building maintenance and

security, personnel practices, and various types of criminal and civil liability.

In its role as insurer, GuideOne frequently works with churches and attorneys on a range of legal issues, including the defense of claims and suits against churches and church personnel. As an insurer of small churches and large denominations (many with churches in more than one state), GuideOne is often able to perceive and evaluate the impact of laws and regulations on houses of worship in a broader manner. GuideOne's background and experience in the advising and defending of churches and church leaders are thus relevant to this case.

The Iowa Supreme Court's assertion of subject matter jurisdiction in this intra-church defamation case raises several issues of concern to GuideOne. First, it is likely from the Iowa Supreme Court's narrow reading of the church autonomy doctrine that more courts will exercise jurisdiction over formerly intra-church disputes. This expansion of jurisdiction over internal church affairs violates one the most fundamental structural restraints on government power. Second, this expansion of jurisdiction will be likely to lead to more lawsuits against churches, as the door to resolving religious disputes is open much wider to disgruntled church members. If the term "spirit of Satan" is libelous, more people will see the civil courts as an option in religious disputes – because the language and methods used by Petitioners in this case are biblically based and commonly used in church disciplinary matters. Third, because of the increase in lawsuits, GuideOne and other insurers will likely advise churches to be more cautious in their disciplinary decisions. Churches and their attorneys will surely share this concern, so it is probable that the Iowa Supreme Court's decision will have

a chilling effect on the exercise of religious speech and conduct. If the ruling stands, then churches will change how they speak and act, as they are forced to decide between religious liberty and costly litigation. Fourth, because the ruling conflicts with decisions of a majority of the other state courts that have addressed the issue *and* with this Court's stated view on the relations of church and state, GuideOne's ability to provide meaningful risk management advice will be diminished.

GuideOne submits this brief to highlight the impact of the Iowa Supreme Court's decision on GuideOne and its insureds. Certiorari review is needed to resolve the significant conflict among the state and federal courts applying the church autonomy doctrine and to provide certainty in an area of law that only this Court controls. Without such review, churches will see an increase in state intrusion in church affairs and a decrease in their religious freedom.

Respectfully submitted,

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BRIEF OF GUIDEONE INSURANCE COMPANY AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

This amicus curiae brief is submitted on behalf of GuideOne Insurance Company ("GuideOne").[1] Petitioners, Iowa Conference of the United Methodist Church, the United Methodist Church of Shell Rock, Iowa, Jerrold W. Swinton, Rick Kromminge, Karen Wahl, Kay J. Lahr, and Karen L. Peterson have consented to GuideOne's filing of this brief. Respondents, Jane and Glen Kliebenstein, have withheld their consent. A motion for leave to file an amicus curiae brief under Supreme Court Rule 37.2(b) is included with this brief.

I. INTEREST OF AMICUS CURIAE

As an insurer licensed to do business in all 50 states, GuideOne insures over 50,000 houses of worship, representing about 20% of the market for non-Catholic, non-Mormon, Christian houses of worship; but also insures synagogues, Buddhist, and Hindu temples. In connection with this coverage, GuideOne operates the Center For Risk Management ("CRM"), an organization formed for the explicit purpose of providing risk management services and advice to churches. Through the CRM, GuideOne provides advice to churches on, for example, handling money, building maintenance and security, personnel practices, and various types of criminal and civil liability.

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[1] This brief was authored by outside counsel for GuideOne. No person or entity, other than GuideOne made a monetary contribution to this brief's preparation or submission. *See* Sup. Ct. R. 37.6. Petitioner is not insured by GuideOne.

In its role as insurer, GuideOne frequently works with churches and attorneys on a range of legal issues, including the defense of claims and suits against churches and church personnel. As an insurer of small churches and large denominations (many with churches in more than one state), GuideOne is often able to perceive and evaluate the impact of laws and regulations on houses of worship in a broader manner. GuideOne's background and experience in the advising and defending of churches and church leaders are thus relevant to this case.

As discussed below, the Iowa Supreme Court's assertion of subject matter jurisdiction in this intra-church defamation case raises several issues of concern to GuideOne and issues that GuideOne is particularly equipped to address. In general, certiorari review of this case is needed to resolve the conflict among the state courts applying the church autonomy doctrine and to provide certainty in an area of law that only this Court authoritatively controls. In addition, the Court should grant certiorari to protect the boundaries between church and state against the erosion caused by the Iowa Supreme Court. Without such review, houses of worship will see an increase in state intrusion in intra-church affairs and a decrease in their religious freedom.

II. SUMMARY OF ARGUMENT

The courts are clogged with cases trying to keep religion from encroaching on the state – this case is about keeping the state out of the internal affairs of the church. The Iowa Supreme Court's conclusion that a civil court can decide whether Petitioners' alleged statement that a congregation had "allowed the spirit of Satan to work in

their midst" is defamatory, is unsupportable if the church autonomy doctrine has any meaning. And this doctrine, which is foundational to our system of government, is the central principle protecting the right of churches to make the decisions about how to run their institutions.

The Iowa Supreme Court's decision highlights in bold terms a conflict that exists among the state courts over how to interpret the church autonomy doctrine in ecclesiastical disputes. Many courts, like the Iowa Supreme Court, exercise jurisdiction in defamation and similar cases with little or no regard for church autonomy. Many more courts, on the other hand, exercise judicial restraint in these kinds of cases, concluding that they have no jurisdiction to hear religious disputes. Most troubling, however, is the fact that the level of state intrusiveness seems to differ as one crosses state lines. So, for instance, a church in Iowa might be held liable for stating in a church disciplinary proceeding that a member is acting in the "spirit of Satan," whereas a church in Ohio would not be liable for the exact same conduct. Whatever the church autonomy doctrine requires, it cannot require different conduct from state to state.

These inconsistent interpretations of the doctrine cause a real fear of state intrusion in church affairs and inhibit the exercise of religious freedom. GuideOne is in the business of insuring churches, and part of that business includes helping churches manage their risks. The inconsistent interpretations of the church autonomy doctrine are a nightmare for churches or denominations with activities in multiple states. As described in the example above, it is possible that a church in one state could be subject to a different level of state scrutiny than the same church in another state. Faced with such conflicting

interpretations of *federal* constitutional rights, churches may censor their religious speech and conduct rather than face the evaluation of such speech by secular tribunals – and the possibility of a big verdict that wipes out its limited funds.[2] This chilling effect on religious liberty is exactly what the church autonomy doctrine was created to prevent.

Although the conflicting interpretations of the doctrine make this case worthy of certiorari review, the Iowa Supreme Court's misapplication of the doctrine on its own warrants review. The decision conflicts with this Court's precedent and undermines the right of churches to make disciplinary decisions affecting their own members. Even assuming,[3] as the Iowa Supreme Court did, that the phrase "spirit of Satan" is capable of *some* secular meaning, in a defamation claim, where truth is a defense, the court will almost certainly become in some way an arbiter of religious truth. A cursory review of the facts shows why. This case arises out of Petitioners' attempts to resolve a religious and doctrinal dispute with a church leader. Petitioners followed United Methodist Church rules on discipline, which rely heavily on biblical teaching. Where

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[2] This is especially so because some claims, such as intentional acts, are not commonly insured against. In some cases, plaintiffs carefully craft their lawsuits to include claims of intent that "get around" insurance coverage because the threat of uninsured liability can add tremendous leverage to the otherwise suspect claims. Without the limitations imposed by the church autonomy doctrine, the suspect claims will carry even more weight in depleting the already-limited assets of religious institutions.

[3] Despite the conclusion by the Iowa Supreme Court, GuideOne can find no reasonable basis for believing that the phrase is capable of a secular interpretation.

the phrase "spirit of Satan" is used, Petitioners cite to biblical passages for support. Those passages bear directly on the dispute and any evaluation of the allegedly defamatory phrase will have to include an assessment of the passages – even if there is *some* secular meaning to the phrase. Such an assessment is precisely what the church autonomy doctrine was created to prohibit.

Unless this Court steps in to correct the many cases, like this case, misapplying or ignoring the doctrine, then one of the primary protections for religious liberty will continue to erode into oblivion. The Court should therefore grant the petition for certiorari.

III. ARGUMENT

A. THIS CASE HIGHLIGHTS THE CONFLICT THAT EXISTS AMONG THE STATES OVER HOW TO INTERPRET THE CHURCH AUTONOMY DOCTRINE IN ECCLESIASTICAL DISPUTES.

This Court should review the Iowa Supreme Court's decision because its interpretation of the church autonomy doctrine is representative of larger confusion among courts over the meaning and scope of the doctrine.

The church autonomy doctrine is about "the right of churches to make for themselves the decisions that arise in the course of running their institutions." Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1394 (1985). Today, this doctrine finds its support in the First Amendment – either the Free Exercise Clause or the Establishment Clause. *See Kedroff v. Saint Nicholas*

Cathedral, 344 U.S. 94, 154-55 (1952) ("[W]e think it must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference."); *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (prohibiting the "excessive entanglement" of church and state under the Establishment Clause); Carl H. Esbeck, *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 Iowa L. Rev. 1, 42-48 (1998) (arguing that church autonomy doctrine is structural and therefore part of the disestablishment principle). But the doctrine is so foundational to our system of government that it applied to the states even before "judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action." *Kedroff*, 344 U.S. at 154; *see* Ira C. Lupu & Robert Tuttle, *The Distinctive Place of Religious Entities in Our Constitutional Order*, 47 Vill. L. Rev. 37, 51 (2002) ("Separationism, however, is not a recent innovation by twentieth century Secularists. Nor is it originally a Secularist position at all. Rather, Separationism has a long legacy as a theological view. . . . "). As this Court articulated, the doctrine is founded on the "broad and sound view of the relations of church and state under our system of laws." *Watson v. Jones*, 80 U.S. 679, 727 (1871).

These contours of the church autonomy doctrine are well known, but, as discussed below, they are often difficult to apply or even ignored, as they were in this case. The intent of the doctrine however is clear: "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Corporation*

of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 341-42 (1987).

Cases involving the church autonomy doctrine generally can be classified into one of two categories: (1) property disputes to determine which church faction is entitled to control of church property after a schism within the church or between the local and general church; and (2) ecclesiastical disputes involving questions of church discipline, organization, or government. *See* David J. Young, *Into the Religious Thicket – Constitutional Limits on Civil Court Jurisdiction Over Ecclesiastical Disputes*, 47 Ohio St. L.J. 475, 476 (1986). Most of the Supreme Court's decisions have been in cases involving property disputes. *See Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Maryland & Virginia Eldership of the Churches of God v. Church of God*, 396 U.S. 367 (1970); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969); *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952); *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929); *Watson v. Jones*, 80 U.S. 679 (1871). This case is about an ecclesiastical dispute involving a church's right to discipline, and this Court has provided little guidance on the scope and breadth of church autonomy in such disputes. *But see Milivojevich*, 426 U.S. at 717-22 (1976) (involving ecclesiastical dispute over defrockment of priest).

The need for guidance on this structural limitation on the state is evidenced by the diversity of interpretation and application of the doctrine. Many courts, consistent with the Iowa Supreme Court, have exercised jurisdiction in defamation and similar cases with little regard for the

church autonomy doctrine. *E.g.*, *McAdoo v. Diaz*, 884 P.2d 1385, 1391 (Alaska 1994); *Marshall v. Munro*, 845 P.2d 424, 428 (Alaska 1993); *Brewer v. Second Baptist Church*, 197 P.2d 713 (Cal. 1948); *Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1988); *Miles v. Perry*, 529 A.2d 199 (Conn. App. Ct. 1987); *House of God Which is the Church of the Living God, the Pillar and Ground of Truth Without Controversy, Inc. v. White*, 792 So.2d 491 (Fla. Dist. Ct. App. 2001) (dismissing claims against church, but not the pastor); *Steed v. St. Paul's United Methodist Church*, 728 So.2d 931 (La. Ct. App. 1999); *Madsen v. Erwin*, 481 N.E.2d 1160 (Mass. 1985); *St. Luke Evangelical Lutheran Church, Inc. v. Smith*, 568 A.2d 35 (Md. 1990); *F.G. v. MacDonell*, 696 A.2d 697 (N.J. 1997); *McKelvey v. Pierce*, 800 A.2d 727 (N.J. 2002); *Berger v. Temple Beth-El of Great Neck*, 756 N.Y.S.2d 94 (N.Y. App. Div. 2003); *Muresan v. Philadelphia Romanian Pentacostal Church*, 962 P.2d 711 (Or. Ct. App. 1998); *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. App. – Dallas 2000, pet. denied).

Some cases have even involved statements similar to the ones made in this case. *E.g.*, *Wadsworth v. Beaudet*, 701 N.Y.S.2d 145 (N.Y. App. Div. 1999) ("amongst us is a modern times Judas who divided the church community"); *Murphy v. Harty*, 393 P.2d 206, 214 (Or. 1964) (accused plaintiff of implementing "Satan's plan of division and destruction").

A majority of the courts, however, have exercised judicial restraint in defamation and similar cases, concluding that they are without subject matter jurisdiction where such disputes involve churches and religious issues. *E.g.*, *Belin v. West*, 864 S.W.2d 838 (Ark. 1993); *Gipson v. Brown*, 749 S.W.2d 297 (Ark. 1988); *DeCorso v. Watchtower*

Bible & Tract Soc'y, Inc., 829 A.2d 38 (Conn. App. Ct. 2003); *Anderson v. Freeman*, C.A. No. 13709, 1997 WL 695573 (Del. Ch. 1997); *Kond v. Mudryk*, 769 So. 2d 1073 (Fla. Dist. Ct. App. 2000); *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. Dist. Ct. App. 1998); *First United Church, Inc. v. Udofia*, 479 S.E.2d 146 (Ga. Ct. App. 1996); *Williams v. Palmer*, 532 N.E.2d 1061 (Ill. App. Ct. 1988); *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 714 N.E.2d 253 (Ind. App. Ct. 1999); *Redgate v. Roush*, 59 P.1050 (Kan. 1900); *Bryan R. v. Watchtower Bible & Tract Soc'y, Inc.*, 738 A.2d 839 (Me. 1999); *Downs v. Roman Catholic Archbishop*, 683 A.2d 808, 811-13 (Md. Ct. Spec. App. 1996); *Smith v. Calvary Christian Church*, 614 N.W.2d 590 (Mich. 2000); *Olson v. Luther Mem. Church*, 1996 WL 70102 (Minn. Ct. App. 1996); *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 N.W.2d 606 (Minn. Ct. App. 1996); *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. Ct. App. 1993); *Brady v. Pace*, 108 S.W.3d 54 (Mo. App. 2003); *Mallette v. Church of God Int'l*, 789 So. 2d 120 (Miss. Ct. App. 2001) (defamation); *Sabatino v. Saint Aloysius Parish*, 654 A.2d 1033 (N.J. Super. Ct. Law Div. 1994); *Decker ex rel. Decker v. Tschetter Hutterian Brethren, Inc.*, 594 N.W.2d 357 (S.D. 1999); *Mason v. Winstead*, 265 S.W.2d 561 (Tenn. 1954); *Tran v. Fiorenza*, 934 S.W.2d 740 (Tex. App. Houston [1st Div.] 1996, n.w.h.); *Franco v. Church of Jesus Christ of Latter-Day Saints*, 21 P.3d 198 (Utah 2001); *Germain v. Pullman Baptist Church*, 980 P.2d 809 (Wash. Ct. App. 1999).

Many courts, in fact, have dismissed defamation claims like the one in this case solely on jurisdictional grounds. *E.g.*, *Sands v. Living Word Fellowship*, 34 P.3d 955 (Alaska 2001) (plaintiff's church called a "cult" and plaintiff called a "cult recruiter"); *McNair v. Worldwide*

Church of God, 242 Cal. Rpr. 823 (Cal. Dist. Ct. App. 1987) (plaintiff accused of "actively fighting God's church. . . . "); *House of God Which is the Church of the Living God, the Pillar and Ground of Truth Without Controversy, Inc. v. White*, 792 So.2d 491 (Fla. Dist. Ct. App. 2001) (action against church barred where pastor called church member a "slut"); *Glass v. First United Pentecostal Church*, 676 So. 2d 724 (La. Ct. App. 1996) (pastor claimed that plaintiffs were "evil spirits in the congregation"); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 936-38 (Mass. 2002) (dismissing defamation claim because it occurred in "context of a religious disciplinary proceeding."); *Rasmussen v. Bennett*, 741 P.2d 755, 758-59 (Mont. 1987) ("we got the filth cleaned out of the congregation, now we will have God's spirit."); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997) (trustees of church asserted that plaintiff "had lied, that he was in league with Satan, that he had been overtaken by a fall, that he was a defiler of a temple and an enemy of the Church and that he was sleeping around."); *Hadnot v. Shaw*, 826 P.2d 978, 988-89 (Okla. 1992) (dismissing defamation claim where statements communicated to the public); *Williams v. Gleason*, 26 S.W.3d 54 (Tex. App. Houston [14th Dist.] 2000, pet. denied) (plaintiffs accused of committing sins "by sowing seeds of discord among the brethren").[4]

The examples cited above are by no means the only cases applying the church autonomy doctrine, and they represent but a sample of the various ways courts have addressed these issues. This conflict is unique in the sense

[4] See the Petition for Writ of Certiorari for a more detailed explication of many of these cases.

that it involves almost exclusively the state courts applying federal constitutional principles. Only this Court can resolve these issues once and for all.

Where there are conflicts between the decisions of state supreme courts and that of this Court on a matter of federal law, the Court often grants petitions for certiorari. *See Hudson v. Louisiana*, 450 U.S. 40, 42 (1981); *William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 14 (1974); *Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 371-72 (1974). This is especially true where there is a federal constitutional right at stake. *See Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 362 (1984). The Court should therefore grant certiorari to clear up the serious confusion among the courts over how to construe the church autonomy doctrine in ecclesiastical disputes.

B. THE INCONSISTENT INTERPRETATIONS OF THE CHURCH AUTONOMY DOCTRINE LEAD TO THE FEAR OF STATE INTRUSION IN CHURCH AFFAIRS AND INHIBIT RELIGIOUS FREEDOM.

The inconsistent interpretations of the church autonomy doctrine diminish a church's ability to manage its risks because they create uncertainty about how involved the state will become in the internal affairs of the church – and what liability might result from such intrusion. This fear of state intrusion in church affairs has a chilling effect on the church's and its religious leaders' religious freedom. By clearing up the inconsistent application of the church autonomy doctrine, this Court can reduce this confusion and restore religious liberty to the churches in this country.

As an insurer of risks, GuideOne provides risk management advice to the churches that it insures. Such guidance is of necessity somewhat generalized, and the insureds are usually encouraged to seek their own expert advisors. However, it is often difficult for risk management advisers to know where there might be major legal variations and adjust their advice accordingly. Insurers deal with variations in states' laws as a consequence of our federalist system. *See Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 787-88 (1982) (O'Connor, J., dissenting) ("Courts and commentators frequently have recognized that the 50 states serve as laboratories for the development of new social, economic, and political ideas."). However, variations in the interpretation of *federal* laws or rights are not similarly justified or expected. U.S. CONST. art. VI, para. 2 ("This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby."). This is especially true when federal constitutional rights are at stake, as they are in this case. *See Milivojevich*, 426 U.S. at 710; *Presbyterian Church*, 393 U.S. 440; *Watson*, 80 U.S. at 733. There is thus no justification for the variations in interpretations of the church autonomy doctrine among the state courts.

The impact on First Amendment rights from these variations is easily apparent when the church is part of a large denomination that operates in multiple jurisdictions. The result in such a case is a chilling effect on the free exercise of religion. For instance, consider a large denomination that has churches in Ohio and Iowa. Iowa now allows civil courts to resolve religious disputes much more freely than Ohio permits. Compare *Kliebenstein v. Iowa Conference of United Methodist Church*, 663 N.W. 2d 404 (Iowa 2003) (holding "spirit of Satan" could be defamatory)

with *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997) (statements that plaintiff "had lied, that he was in league with Satan, that he had been overtaken by a fall, that he was a defiler of a temple and an enemy of the Church and that he was sleeping around" could not be defamatory). These variations necessitate that the denomination's member churches conduct themselves in a different manner in Ohio than they do in Iowa even when they confront the same type of issue. If there is a church discipline issue, for example, the church may simply not be able to express its deeply held belief openly for fear of liability in Iowa, although a member of the same denomination could express the same belief with impunity in Ohio.[5] Likewise, if a church makes the same comment about two people but one lives in Iowa and the other in Ohio, then it could be liable to the former but not to the latter. This happens frequently, but not on matters of federal law.

In the face of such conflicts, one of the likely outcomes is that the denomination will simply modify its behavior in

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[5] Variations in laws between the states and circuits have a complicating effect upon the setting of rates and losses, all of which ultimately add to the expense paid by churches in the form of insurance premiums. Of course, the risk management, or loss avoidance, ramifications of this issue are more significant. But if states have different laws, such as on the level of state intrusion permitted in church affairs, then loss experience may be different, which means the same type of risk from state to state may be subject to different premiums. Thus, a church in Iowa could pay higher premiums than a similarly situated church in a neighboring state, such as Ohio, solely because of how the states' courts interpret the First Amendment. **Such logic would amount to a surcharge on religious expression and freedom.** The burden of the inconsistent interpretations of the church autonomy doctrine should not fall on those the doctrine is designed to protect.

such a way as to meet the demands of the most intrusive state (Iowa) – sort of a lowest common denominator approach. Thus, the church might instruct its church leaders to resist using terms like "spirit of Satan" because to do so could subject the church to liability in civil courts. Such a restriction may mean little to those outside the church family, but doctrinal disagreements – sometimes heated – are often important to the health of a church. *See* Jaroslav Pelikan, *The Christian Tradition: A History of the Development of Doctrine* (Chicago 1975).[6] In fact, as in this case, the resolution of doctrinal or religious disagreements are often vital to the continuing existence of the church.

This demonstrates one of the central constitutional concerns in these cases – churches will be forced to restrict the kinds of theological discussions and rhetoric they engage in because they fear the threat of civil intrusion or liability. The simple uncertainty in liability chills the church's exercise of its religious freedom because the state breaches the wall of separation that was meant, in great part, to protect *religion from the state*. *Watson*, 80 U.S. at 730 ("The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority.").

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[6] *See* Irenaeus, *Libros Quinque Adversus Haereses* 5.26.I (In arguing against the gnostics: "Let those persons who blaspheme the Creator ... as [do] the Valentinians and all the falsely so-called 'gnostics,' be recognized as agents of Satan by all who worship God. Through their agency Satan even now ... has been seen to speak against God, that God who has prepared eternal fire for every kind of apostasy.").

This Court should grant certiorari in this case to provide a uniform interpretation of the church autonomy doctrine and return to churches the power to decide matters of faith, doctrine, and internal governance free from state interference. *Kedroff*, 344 U.S. at 116.

C. THE IOWA SUPREME COURT'S INTERPRETATION OF THE CHURCH AUTONOMY DOCTRINE CONFLICTS WITH SUPREME COURT PRECEDENT AND UNDERMINES THE RIGHT OF CHURCHES TO MAKE DISCIPLINARY DECISIONS AFFECTING THEIR MEMBERS.

The Iowa Supreme Court completely misinterpreted the church autonomy doctrine when it concluded that it is possible to avoid getting involved in religious issues because the phrase "spirit of Satan" has secular meanings. Even assuming that it is true that the phrase is capable of *some* secular meaning, the Iowa Supreme Court's decision will necessarily embroil the civil courts in a religious dispute. This is true because, under Iowa law, "substantial truth is a defense in a defamation action." *Hovey v. Iowa State Daily Publ'n Bd., Inc.*, 372 N.W.2d 253, 256 (Iowa 1985). The defendant church in this case would seek to prove its defense by showing that the plaintiff did not walk in the "spirit of Jesus" but instead walked in the "spirit of Satan." What does it mean to do one or the other? There is no way that a civil court can make such a determination without delving into how the church itself defines those terms.

This is a problem of judicial competence that is highlighted by the Iowa Supreme Court's selective quotes from the letter at issue in this case. The court included the

letter in its opinion, but did so with several well-placed ellipses, which ostensibly are meant to omit words or clauses that are not necessary to convey the meaning of a passage. *Webster's II New College Dictionary*, 365 (1999). As it referred to the relevant portion of the letter, the Iowa Supreme Court quoted: "You know whether a person has the spirit of Jesus or Satan by their fruits. . . . I am distressed and perplexed why people have tolerance and compassion for anyone who habitually tears down the Body of Christ by habitually sowing discord and pain." *Kliebenstein*, 663 N.W.2d at 405. What the court left out by use of the ellipsis was the citation in the letter to the biblical passage found in Matthew 7:15-20, which reads:

> Watch out for false prophets. They come to you in sheep's clothing, but inwardly they are ferocious wolves. By their fruit you will recognize them. Do people pick grapes from thornbushes, or figs from thistles? Likewise every good tree bears good fruit, but a bad tree bears bad fruit. A good tree cannot bear bad fruit, and a bad tree cannot bear good fruit. Every tree that does not bear good fruit is cut down and thrown into the fire. Thus, by their fruit you will recognize them.[7]

Without reference to the religious teachings of the specific church citing the passage, how is a civil court equipped to determine what it means? What does being a "false prophet" entail? What does it mean for a person to come as a "ferocious wolf"? What does it mean to bear "good fruit" or "bad fruit"? What does it mean to say that a person will be "cut down and thrown into the fire?" Theologians

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[7] Matthew 7:15-20 (New International Version).

themselves do not always agree on the answers to these questions. Yet these and other questions have relevance because Petitioners will of necessity be allowed to show that the allegation that Respondent was walking in the "spirit of Satan" was true. It is hard to see how the evaluation of such claims will not entangle the court in the task of resolving a specifically religious dispute.[8]

If the church autonomy doctrine is meant to do anything, it is meant to prevent exactly what the Iowa Supreme Court requires in this case. Civil courts are simply not competent to judge ecclesiastical matters. *Milivojevich*, 426 U.S. at 714-15 & n.8 ("Civil judges obviously do not have the competence of ecclesiastical tribunals in applying the 'law' that governs ecclesiastical disputes. . . . "). The Iowa district court opinion makes clear certain matters which the Iowa Supreme Court ignores: the letter sent by Reverend Swinton was written and sent as part of a disciplinary matter, and the letter followed the United Methodist Church *Book of Discipline*, which is the official teaching, law, polity, and governance of the United Methodist Church. As the letter states, Petitioners were trying to resolve a disciplinary problem within the church. *See Amos*, 483 U.S. at 341-42 (noting how church autonomy includes the right to "resolve their own disputes").

In addition to the issue of judicial competence, this Court has also held from the beginning that church disciplinary disputes are off limits because of the very

[8] The same problem arises for the other reference to "spirit of Satan" contained in Reverend Jerrold Swinton's letter. *See Kliebenstein*, 663 N.W.2d at 405 (citing 1 John 3:4-10). The civil courts are completely unequipped to address this passage in a truly secular manner.

nature of the relationship of the disputants. *Watson*, 80 U.S. at 729 ("All who unite themselves to such a body do so with an implied consent to this [church] government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed."). Thus, the idea that aggrieved church members would attempt to conscript civil courts in a religious battle was a central basis for the prohibition embodied in the church autonomy doctrine.

Ignoring these admonitions, the Iowa Supreme Court requires courts to determine what is religious and what is secular – something this Court has held they are not competent to do. *See United States v. Lee*, 455 U.S. 252, 257 (1982) (quoting *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 716 (1981)) (" 'Courts are not arbiters of scriptural interpretation' "); *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977) ("The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment. . . . "); *Lemon v. Kurtzman*, 403 U.S. 602, 620 (1971) ("[S]tate inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids."); *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953) ("[I]t is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment."); *United States v. Ballard*, 322 U.S. 78, 86-87 (1944). The Iowa Supreme Court's ruling completely undermines the boundaries between church and state recognized by this Court.

As it has done in other cases, this Court should grant certiorari to determine whether a state court has properly interpreted, applied, or extended prior Supreme Court decisions. *E.g.*, *Campbell v. Louisiana*, 523 U.S. 392, 395-96 (1998); *Bullington v. Missouri*, 451 U.S. 430, 432 (1981); *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965); *Oregon v. Mathiason*, 429 U.S. 492, 493 (1977); *Hankerson v. North Carolina*, 432 U.S. 233, 240 (1977). The Court has taken care to make uniform the interpretations of the Establishment Clause and Free Exercise clause in other instances, such as those cases involving school prayer, aid to churches, and equal access. *See e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (vouchers); *Good News Club v. Milford Central Sch.*, 533 U.S. 98 (2001) (equal access); *Sante Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (prayer in school); *Mitchell v. Helms*, 530 U.S. 793 (2000) (religious school aid); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (equal access); *Lee v. Weisman*, 505 U.S. 577 (1992) (prayer in school). This Court does so to protect the boundaries that have developed between church and state, for the protection of both.

In this case, the Court should grant certiorari to protect the boundaries between church and state against the erosion caused by the Iowa Supreme Court.

IV. CONCLUSION

As argued by the Petitioner, and supported by the foregoing additional reasons, the Petitioners' writ of certiorari should be granted.

Respectfully submitted,

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